1130 17-557

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 191.

MILLS COUNTY, IOWA, PLAINTIFF IN ERROR,

vs.

THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED MARCH 6, 1880.

	Original.	Print.
George S. Wilson, answer	65	42
Default *vs.* certain defendants	65	43
Otis Allis's answer	65	43
A. Sherman, intervention	66	43
John A. Boswell, intervention	66	43
Josiah Wearin, intervention	66	43
Lewis Robbins, intervention	67	44
B. Glenn, intervention	67	44
A. Kritz, intervention	67	44
Plaintiff's reply to pages 22 and 23, answer, Chicago, Burlington and Quincy	67	44
Plaintiff's reply to answer Brooks *et al.*, trustees	68	44
Plaintiff's reply to Eckley *et al*	69	45
Chicago, Burlington and Quincy Railroad Company's amendment to answer	69	45
PLAINTIFF'S EVIDENCE IN CHIEF.		
No.		
1. W. Fay's testimony	73	48
2. N. Hanks' testimony	73	48
3. E. C. Bosbyshell's testimony	75	49
4. Resolution of board of supervisors appointing committee to confer	77	50
5. Minute book, showing proposition and action	77	50
6. Minute book, showing order of submission to vote	77	51
7. J. W. Powell, tax and election records	78	51
8. D. M. Mitchell, testimony	78	51
9. D. M. Whitfield, testimony	79	52
10. Josiah Wearin, testimony and receipt	79	52
11. J. W. Powell, testimony and receipts	80	53
12. Acts of Congress, and general assembly	80	53
13. Burlington and Missouri River Railroad Company, articles of incorporation	81	53
14. Burlington and Missouri River Railroad Company, acceptance of land grant	82	54
15. Burlington and Missouri River Railroad Company, certificate and plat	83	55
16. Agreement on trial	84	56
17. Record, former action in district court	84	56
18. Opinion and judgment, former action in Supreme Court	105	73
19. Docket entry, former action in Supreme Court of the United States	106	74
20. Opinion and judgment, former action in Supreme Court of the United States	106	74
21. T. P. Ballard, testimony and publication notice of election	108	75
22. C. E. Perkins's deposition	108	75
23. D. M. Whitfield, testimony, recalled	108	76
24. Josiah Wearin, testimony, recalled	109	76
25. J. W. Powell, testimony, recalled	109	76
26. E. C. Bosbyshell, testimony, recalled	109	76
27. Certified copies of deeds, Exhibits D, E, F, and G	109	76
28. A. J. Russell, testimony	110	77
28*a*. W. G. Summers, testimony	112	78
29. Fielden Utterbach, testimony	113	78
30. Samuel Allis, testimony	115	80
31. Letter of Acting Commissioner of the General Land Office	116	81
DEFENDANTS' EVIDENCE IN CHIEF.		
No.		
1. C. W. Spaulding, deposition	117	81

	Original.	Print.
2. C. E. Perkins, deposition	151	106
3. W. W. Peet, deposition	154	107
4. A. E. Touzalin, deposition	161	111
5. J. M. Walker, deposition	161	112
6. Henry Strong, deposition	162	112
7. H. A. Copeland, deposition	163	112
8. D. N. Smith, deposition	164	113
9. David Rorer, deposition	168	116
10. J. M. Forbes, deposition	170	117
11. W. H. Taft, deposition	170	117
12. H. C. Watkins, deposition	170	118
13. B. F. Buffington, deposition	175	121
14. Bennett Creech, deposition	176	121
15. W. W. Peet, oral testimony	178	123
16. M. M. Angell, oral testimony	180	124
17. Swamp land records and objections	184	126
18. J. M. Powell recalled and books offered	184	126
19. D. C. Briggs, oral testimony	185	127
20. L. W. Tubbs, oral testimony	185	127
21. D. C. Briggs, oral testimony	186	128
22. S. W. Williams, oral testimony	187	128
23. William Hale, oral testimony	188	129
24. J. H. Wing, oral testimony	189	130
25. Act of Congress, January 2, 1864	191	131
26. S. V. Proudfit	191	131
27. William Hale, recalled	191	132
28. Press copy of Hale's letter to Ewing	192	132
28*a*. D. M. Whitfield	192	132
29. Tax deeds, exhibit to Chicago, Burlington and Quincy	193	132
30. Lease Burlington and Missouri River Railroad Company to Chicago, Burlington and Quincy Railroad Company	194	133
31. Exhibit E to answer of Chicago, Burlington and Quincy Railroad Company	194	133

PLAINTIFF'S REBUTTING EVIDENCE.

No.		
32. D. M. Mitchell recalled	195	134
33. A. J. Hight, testimony	196	134
34. Transfer act, 1866	197	135
35. Lewis Robbins, testimony	197	135
36. Order of board as to taxes, 1874	198	136
37. D. M. Whitfield	198	136
38. Joel Solomon	199	136
39. John Barbour	199	137
40. Order remitting taxes, 1868–69	201	138

DEFENDANTS' REBUTTING EVIDENCE.

No.		
32. W. H. Taft, testimony	202	138
33. M. M. Angell	202	139
Final decree	203	139
Notice of appeal and return	204	140
Assignment of errors	207	142
Appellant's amendment to abstract of record	208	142
Additional assignment of errors	211	144

	Original.	Print.
George S. Wilson, answer	65	42
Default *vs.* certain defendants	65	43
Otis Allis's answer	65	43
A. Sherman, intervention	66	43
John A. Boswell, intervention	66	43
Josiah Wearin, intervention	66	43
Lewis Robbins, intervention	67	44
B. Glenn, intervention	67	44
A. Kritz, intervention	67	44
Plaintiff's reply to pages 22 and 23, answer, Chicago, Burlington and Quincy	67	44
Plaintiff's reply to answer Brooks *et al.*, trustees	68	44
Plaintiff's reply to Eckley *et al*	69	45
Chicago, Burlington and Quincy Railroad Company's amendment to answer	69	45
PLAINTIFF'S EVIDENCE IN CHIEF.		
No.		
1. W. Fay's testimony	73	48
2. N. Hanks' testimony	73	48
3. E. C. Bosbyshell's testimony	75	49
4. Resolution of board of supervisors appointing committee to confer	77	50
5. Minute book, showing proposition and action	77	50
6. Minute book, showing order of submission to vote	77	51
7. J. W. Powell, tax and election records	78	51
8. D. M. Mitchell, testimony	78	51
9. D. M. Whitfield, testimony	79	52
10. Josiah Wearin, testimony and receipt	79	52
11. J. W. Powell, testimony and receipts	80	53
12. Acts of Congress, and general assembly	80	53
13. Burlington and Missouri River Railroad Company, articles of incorporation	81	53
14. Burlington and Missouri River Railroad Company, acceptance of land grant	82	54
15. Burlington and Missouri River Railroad Company, certificate and plat	83	55
16. Agreement on trial	84	56
17. Record, former action in district court	84	56
18. Opinion and judgment, former action in Supreme Court	105	73
19. Docket entry, former action in Supreme Court of the United States	106	74
20. Opinion and judgment, former action in Supreme Court of the United States	106	74
21. T. P. Ballard, testimony and publication notice of election	108	75
22. C. E. Perkins's deposition	108	75
23. D. M. Whitfield, testimony, recalled	108	76
24. Josiah Wearin, testimony, recalled	109	76
25. J. W. Powell, testimony, recalled	109	76
26. E. C. Bosbyshell, testimony, recalled	109	76
27. Certified copies of deeds, Exhibits D, E, F, and G	109	76
28. A. J. Russell, testimony	110	77
28*a*. W. G. Summers, testimony	112	78
29. Fielden Utterbach, testimony	113	78
30. Samuel Allis, testimony	115	80
31. Letter of Acting Commissioner of the General Land Office	116	81
DEFENDANTS' EVIDENCE IN CHIEF.		
No.		
1. C. W. Spaulding, deposition	117	81

	Original.	Print.
2. C. E. Perkins, deposition	151	106
3. W. W. Peet, deposition	154	107
4. A. E. Touzalin, deposition	161	111
5. J. M. Walker, deposition	161	112
6. Henry Strong, deposition	162	112
7. H. A. Copeland, deposition	163	112
8. D. N. Smith, deposition	164	113
9. David Rorer, deposition	168	116
10. J. M. Forbes, deposition	170	117
11. W. H. Taft, deposition	170	117
12. H. C. Watkins, deposition	170	118
13. B. F. Buffington, deposition	175	121
14. Bennett Creech, deposition	176	121
15. W. W. Peet, oral testimony	178	123
16. M. M. Angell, oral testimony	180	124
17. Swamp land records and objections	184	126
18. J. M. Powell recalled and books offered	184	126
19. D. C. Briggs, oral testimony	185	127
20. L. W. Tubbs, oral testimony	185	127
21. D. C. Briggs, oral testimony	186	128
22. S. W. Williams, oral testimony	187	128
23. William Hale, oral testimony	188	129
24. J. H. Wing, oral testimony	189	130
25. Act of Congress, January 2, 1864	191	131
26. S. V. Proudfit	191	131
27. William Hale, recalled	191	132
28. Press copy of Hale's letter to Ewing	192	132
28*a*. D. M. Whitfield	192	132
29. Tax deeds, exhibit to Chicago, Burlington and Quincy	193	132
30. Lease Burlington and Missouri River Railroad Company to Chicago, Burlington and Quincy Railroad Company	194	133
31. Exhibit E to answer of Chicago, Burlington and Quincy Railroad Company	194	133

PLAINTIFF'S REBUTTING EVIDENCE.

No.		
32. D. M. Mitchell recalled	195	134
33. A. J. Hight, testimony	196	134
34. Transfer act, 1866	197	135
35. Lewis Robbins, testimony	197	135
36. Order of board as to taxes, 1874	198	136
37. D. M. Whitfield	198	136
38. Joel Solomon	199	136
39. John Barbour	199	137
40. Order remitting taxes, 1868–'69	201	138

DEFENDANTS' REBUTTING EVIDENCE.

No.		
32. W. H. Taft, testimony	202	138
33. M. M. Angell	202	139
Final decree	203	139
Notice of appeal and return	204	140
Assignment of errors	207	142
Appellant's amendment to abstract of record	208	142
Additional assignment of errors	211	144

	Original.	Print.
Appellant's abstract (Chicago, Burlington and Quincy Railroad Company, appellant, *vs.* Mills County	212	144
Petition	213	145
Exhibit C to petition (proposition of settlement)	216	146
Exhibit D to petition (report of committee)	218	148
Exhibit B to petition (lease and agreement)	219	148
Motion to consolidate	225	152
Motion to transfer to equity docket	225	152
Ruling of court on motion to transfer and consolidate	225	152
Answer of defendant	226	152
Exhibit D to answer (decree of Supreme Court of the United States)	235	158
Judgment of bill of exceptions and notice of appeal	236	158
TESTIMONY.		
B. F. Buffinton	237	159
B. Creech	239	160
H. C. Watkins	240	161
W. H. Taft	242	162
J. H. Wing	242	162
S. M. Williams	245	164
J. M. Powell	245	164
Agreement concerning the swamp land records	247	166
Samples of swamp land record	248	166
Samples of swamp land record	249	167
William Hale	250	167
Letter of Hale to Ewing	251	168
D. C. Briggs	252	169
A. E. Touzalin	254	170
L. W. Tubbs	256	171
D. N. Smith	257	172
D. M. Whitfield	258	173
J. M. Forbes	258	173
C. E. Perkins	259	173
E. C. Bosbyshell	261	175
J. M. Walker	262	175
H. Strong	262	175
H. A. Copeland	263	176
C. W. Spaulding	265	177
W. Fay	271	181
N. Hanks	272	182
J. M. Powell	273	182
Amendment to abstract by appellees	274	182
Submission of cause in the Supreme Court	281	187
Judgment	282	187
Petition for writ of error	283	187
Bond	287	188
Writ of error	294	190
Citation	298	191
Proof of service	302	192
Clerk's certificate	306	193

a Supreme court of Iowa.

Hon. Joseph M. Beck, chief justice; Hon. Austin Adams, Hon. Wm. H. Seevers, Hon. James H. Rothrock, Hon. James G. Day, justices; E. J. Holmes, clerk.

b MILLS COUNTY, IOWA, APPELLANT,
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD COMPANY et al.

Appeal from Mills district court.

Be it remembered that heretofore, to wit, on the 31st day of August, 1876, there was filed in the office of the clerk of the supreme court of Iowa the abstract of appellant and appellant's amendment to abstract, together with the appellant's abstract in case of The C., B. & Q. R. R. Co. appellant, vs. Mills County, in words and figures following, to wit:

1 In the supreme court of Iowa, September term, 1876.

MILLS COUNTY, IOWA, APPELLANT,
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY et al., appellees.

Appeal from Mills district court.

D. H. Solomon, Chas. B. Lawrence, L. W. Ross, for appellant.
Hale, Stone & Proudfit and O. H. Browning, for appellees.
Kelley Brothers, for Otis E. Allis, appellee.

On the 29th day of January, 1874, said Mills County, Iowa, by D. H. Solomon, attorney, filed a petition in equity, making The Burlington & Missouri River Railroad Company, John M. Forbes, Henry P. Kidder, and John N. A. Griswold, parties defendant thereto, as follows:

2 The plaintiff and petitioner, Mills County, Iowa, in this her petition, states that the defendant, The Burlington & Missouri River Railroad Company, is a corporation in the State of Iowa, and known and doing business by and under the name and style of The Burlington & Missouri River Railroad Company.

2d. That by an act of Congress, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State," approved May 15, 1856, certain lands, interests, rights, powers, and privileges were thereby conferred upon the State of Iowa, to aid in the construction of a railroad from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River, and for other purposes. That so much of said lands, interests, rights, powers, and privileges as were granted and conferred under and in pursuance of said act of Congress to aid in the construction of said railroad, were by an act of the general assembly of the State of Iowa, en-

titled "An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,' approved May 15, 1856," which was approved on the 14th day of July, 1856, granted and conferred upon the said Burlington & Missouri River Railroad Company, then as now being a body corporate, created and existing under the laws of the State of Iowa. That the said defendant, The Burlington & Missouri River Railroad Company, did within ninety days after the passage of said act of the Iowa general assembly, assent to and accept the provisions of said act in the manner in which they were by said act required to do. That under and by virtue of these acts and grants of land, and other acts and grants, both by the general assembly of the State of Iowa and the Congress of the United States, the said defendant, The Burlington & Missouri River Railroad Company, has had and received acres of land donated to them for the purpose of aiding them in the building and completing of their said railroad over and above the lands in controversy herein. That in order to fix the particular parcels and tracts of the public lands that
3 were to be covered, included in, and granted by said land grant, the line and route of said road was required to be definately fixed and located, and by the Iowa act, on or before the first day of April next after the passage thereof, and the plaintiff avers that the final location of the line and route of said railroad through the county of Mills, as well as every other county through which it passed, was duly, legally, and definately fixed and determined, so as to secure to said defendant, The Burlington & Missouri River Railroad Company, the said lands, interests, powers, and privileges to them granted and conferred as is above stated, on the 24th day of March, 1857, and that this, the said defendant, The Burlington & Missouri River Railroad Company, became, by such acceptance and location, bound under the obligations of a contract to the State of Iowa, and to all the people and the citizens thereof, and more especially those of the county of Mills, to build and construct its said road on said line and route through Mills County, as well as all the rest through which it passed.

3d. The plaintiff states that at an early day a conflict arose between plaintiff and the said defendant, The Burlington & Missouri River Railroad Company, in regard to the ownership of a large body of lands situated in Mills County, amounting in the aggregate to some 23,365 acres, a particular description of which is hereto attached as Exhibit A. That said lands described in said Exhibit A are of the class of lands known as swamp lands. That in an action heretofore tried in this court, wherein this plaintiff, Mills County, Iowa, was the plaintiff, and this defendant, The Burlington & Missouri River Railroad Company, was the defendant, this plaintiff, Mills County, Iowa, was, by a judgment and decree duly made and given, a copy of which is hereto attached and marked Exhibit B, declared to be the owner in fee-simple of said lands, and to be entitled to the uninterrupted control and use and enjoyment of the same, in which action the basis of the defendant's claim therein was said act of Congress, approved May 15, 1856, entitled "A bill making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of
4 certain railroads in said State," and said act of the general assembly of the State of Iowa, approved July 14, 1856, entitled "An

act to accept the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,' approved May 15, 1856;" an acceptance and compliance with its terms on the part of the defendant, The Burlington & Missouri River Railroad Company, of the duties, conditions, obligations, and privileges conferred and imposed by said Iowa act upon said company, and the location of the line and route of said railroad, and (certain certificates signed by the Commissioner of the General Land Office, certifying the lands in dispute in that action as inuring to the State of Iowa for the use of the said Burlington & Missouri River Railroad Company, and said act of Congress of May 15, 1856—see amendment filed 17th of February, 1876, p. 447 of Transcript) which claim of said railroad company, one of the defendants herein, was in that action adjudged and accreed to be illegal, null, and void in regard to the lands in controversy in said former action, of which Exhibit A hereto contains a list. That in said former action this plaintiff, as the plaintiff therein, claimed to be the owner of said lands by virtue of said act of Congress, approved September 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," and an act of the general assembly of the State of Iowa entitled "An act to dispose of the swamp and overflowed lands within the State, and to pay the expenses of surveying and selecting the same," passed January 13, 1853, and other acts of said general assembly supplementary thereto, and of an act of Congress entitled "An act to confirm to the several States the swamp and overflowed lands selected under the act of September 28, 1850, and the act of the 2d of March, 1849," approved March 3, 1847, selections duly made under said acts as swamp lands, and approved by the proper officers, all of which will fully appear, reference being made to Exhibits A and B hereto attached and the record to said former action. That said judgment
5 on appeal taken to the supreme court of the State of Iowa by the defendants therein was, at the June term thereof, 1867, affirmed, which judgment of affirmance by the supreme court of Iowa has never been reversed, modified, or changed, but was reaffirmed by the Supreme Court of the United States on the 7th day of February, 1870, having been on the 2d day of February, 1870, duly submitted, not upon any agreement to settle, but upon its merits and record, to abide the decision of a similar case which was contested fully on both sides, so that plaintiff says that all claims of said defendant, The Burlington & Missouri River Railroad Company, to the lands described in said Exhibit A which were and are based upon acts of Congress and Federal officers and State officer, in pursuance of such acts, have been by the courts of higher resorts duly adjudged to be and to have been null and void as to each and every parcel of said land.

4th. But the pl'ff states that notwithstanding the said decision of the supreme court of Iowa at the June term, 1867, and pending the said appeal to the Supreme Court of the United States, and just prior to the commencement of work upon their road-bed in Mills County, the said def't, The B. & M. R. R. Co., through its officers and agents, by means of scare lines and other fraudulent devices and pretences resorted to for the purpose of creating a fear in the minds of the people of Mills County,

threatened that, notwithstanding the said solemn contract with the State of Iowa to build and construct their said road on the line and route so definitely fixed by them as is herein above stated, unless other inducements were offered and given them the company would abandon its said line through Mills County and go to other rival points above or below line; that influenced and alarmed by said fraudulent practices, the then board of supervisors of Mills County, Iowa, did entertain a proposition for a contract affecting a great portion of the swamp lands of Mills County, Iowa, and those described in Exhibit A, in the fall of 1868, by the terms of which many of said lands without being described therein were to be devoted and appropriated to said railroad company for the pur-
6 pose of securing the completion of said railroad through Mills County via Glenwood in said county, with the express condition that the contract should not be binding upon Mills County unless the said railroad company should complete said railroad through Mills County via Glenwood, and build a depot at Glenwood, in said county, and providing, further, that the suit then pending (that above described) in the Supreme Court of the United States should be continued from term to term, by agreement of parties, until the conditions of the contract shall have been complied with, and conditioned still further that in case said railroad company shall fail or neglect to build said railroad through Mills County via Glenwood, and also build and establish a depot at Glenwood, in said county, then and in that event said lawsuit to stand for final hearing in the Supreme Court of the United States (a copy of which proposition for a contract is hereto attached and marked Exhibit X, and made a part of this petition; and pl'ff asks that said document attached to this amendment, and including the words "July 13, 1868," be considered and treated as such Exhibit X to the original petition and as a part thereof; and the pl'ffs aver that the above document referred to as Exhibit X is, as far as and including the words "July 13, 1868," a copy of the document referred to in the original petition by the words "proposition for a contract," which occur and are to be found in the 24th line of the 9th page of said original petition, 11 page of Transcript, and that the balance of said exhibit are the signatures thereto and the action of the officers as found of record, and which are here added in order to comply with the order of court for more specific statements). See amendment filed 22d February, 1875, page 117 of transcript.

But pl'ff avers that said proposition and contract is and ever has been void, because they say that the lands which were the subject-matter thereof had, under and by virtue of the statutes above cited, vested in the county of Mills long prior thereto as swamp lands, and the same was a contract and proposition to devote certain of said swamp lands to the making of a railroad through the county of Mills, and none of said lands or proceeds thereof could be so devoted without the question whether the same
7 should be so devoted shall have been first submitted at some general or special election to the people of the county, and they say that up to and until the 19th day of June, 1871, the same had not been submitted.

5th. The pl'ff states that notwithstanding said proposition and contract had not been so submitted to a vote in pursuance of the terms of said void contract, the def't, the B. & M. R. R. Co., has induced certain persons,

members of the board of supervisors of Mills County, to sign and deliver to said railroad company at different times what purported to be quit-claim deeds and describing divers tracts of swamp lands; one of which deeds bears date October 18, 1869, describes swamp lands to the amount of 6,260 $\frac{55}{100}$ acres, and is recorded in book 23, at page 173, of the deed records of said county, a copy of which, as it remains of record, is annexed hereto as Exhibit C, and is made part hereof.

Another, bearing date October 18, 1869, describes 1,960 acres swamp lands, recorded in book 23, page 177; copy attached hereto as Exhibit D.

Another, bearing date January 4, 1870, describing 1,760 acres swamp land, recorded in book 23, page 261; copy attached hereto as Exhibit E.

Another, bearing date September 6, 1870, describing 3,560 acres swamp land, recorded in book 13, page 310; copy attached hereto as Exhibit F.

Another, bearing date June 19, 1871, describes 240 acres swamp land, recorded in book 13, page 362; copy attached hereto as Exhibit G (see amendment filed 17th February, 1876, page 443), purporting to convey to said railroad company, in all, by these five deeds, 13,720 $\frac{55}{100}$ acres of land. Pl'ff avers and claims that said contract or proposition for a contract was and is void; that the same was obtained by fraud and misrepresentation; that the said board of supervisors had no power or authority to make such a contract (nor had the persons signing said deeds any power or authority to sign and deliver said deeds, any or either of them, to said railroad company. (See amendment filed February 17, 1876, page 445 of transcript.) That said contract and deeds were and are without consideration, and are for that reason illegal and void. That the
8 said def't, the B. & M. R. R. Co., have thereby acquired no title to the lands embraced in either of the 5 deeds marked Exhibits C, D, E, F, and G, but that notwithstanding the courts of highest resort have confirmed the title of Mills County, Iowa, to all the lands conveyed in each of said 5 deeds to the said railroad company, and pronounced that the claims of said railroad company thereto were groundless and utterly null and void, said deeds are a cloud upon the title of Mills County and calculated to deceive innocent *bona fide* purchasers.

6th. The pl'ff further shows that said supposed contract, so far as it may appear and be sought to be made to appear to have been a compromise of the suit then pending in the Supreme Court of the United States, was not by either party to said suit used or treated as a compromise or settlement thereof, for they say said suit was fully and stoutly contested by each party thereto and duly submitted for a final decision upon its record and merits, of which said supposed compromise did not constitute a part, and that the board of supervisors of Mills County had at the time no right, power, or legal authority to make such a compromise, involving as *as* it did a diversion of a trust fund and a surrender by agents of the whole of the subject-matter in controversy in a suit of their principal, and they aver that said proposition or contract was not a compromise of said suit, and that it was not and has not been so treated or regarded by either party, but was in reality merely a donation to said company upon the consideration that they would do what they were already under contract to do, and an attempt to devote the swamp lands and their proceeds to the building of a railroad through the county of Mills, and after the title thereto had already vested in Mills County and the highest court of the State of Iowa had so decided.

7th. The pl'ff says, farther, that after said deeds, which are attached hereto as Exhibits C, D, E, F, and G, had all been made, executed, delivered, and recorded at the September meeting of the supervisors of Mills County, Iowa, in the year 1871, an order for the submission of
9 the said contract between Mills County and the B. & M. R. R. Co., copy of which is hereto attached and marked Exhibit H, to the voters of Mills County, Iowa, at the ensuing general election, to be held on the 10th day of October, 1871, submitting to them the question whether the amount of swamp land specified in said contract and the proceeds thereof to the amount of $10,000 should be devoted to the purposes set forth in said contract was made, and they aver that said order of submission was complied with and the vote was duly taken as directed, and that there were 1,388 votes cast at said election for and against affirming said contract so submitted, and that there were cast for affirming said contract but 357 votes, while there were 1,031 votes cast against affirming said contract; and so they aver that said proposition and contract was defeated and failed to be ratified and affirmed by Mills County, Iowa, one of the high contracting parties thereto, and the said proposed contract and all the said conveyances, including the deeds hereto attached as Exhibits C, D, E, F, and G, made in pursuance thereof, were repudiated and disaffirmed by the pl'ff, Mills County, Iowa, as soon as an opportunity was afforded to give an expression in regard to affirming or rejecting the same, and that for these reasons said contract and deeds should no longer be allowed to stand as clouds upon pl'ff's rights in regard to the lands described in said Exhibits C, D, E, F, and G, and pl'ff says there is no remedy at law adequate to pl'ff's protection and relief from these instruments, Exhibits C, D, E, F, and G, and that she can obtain full justice and guard and protect her rights in a court of equity only.

8th. Pl'ff farther states that she is informed and believes that the other def'ts, J. M. Forbes, Henry P. Kidder, and John N. A. Griswold, claim to have some interest in and to the lands described in said Exhibits C, D, E, F, and G, by, through, and under said deeds, and therefore makes them parties def't in order to bar any such claims.

10 PARAGRAPH II.—The pl'ff, Mills County, Iowa, as further cause of complaint and ground of relief and protection against these def'ts, and each of them, in this behalf says that a proposition to devote certain of the swamp lands and some of the proceeds of the sales thereof to the construction of the B. & M. R. R. through Mills County upon certain terms and conditions therein contained in the shape of a contract between said Mills County, Iowa, as one party thereto, and the B. & M. R. R. Co. as the other, was, by a resolution of the board of supervisors of said county at their September session, 1871, ordered to be submitted to the voters of Mills County at the next ensuing general election, to be held on the 10th day of October, 1871, the question whether the amount of swamp land specified in said contract, and the proceeds thereof to the amount of $10,000 shall be devoted to the purposes set forth in said contract, which is to be found on pages 265, 266, and 267 of minute-book B, of the records of said board, a copy of which order of submission is hereto attached as Exhibit H; that submission of said question was duly made in pursuance of said order, and the vote taken as directed on the 10th day of October, 1871; and that there were cast in favor of affirming said

contract but 357 votes, and that there were cast against affirming the same 1,031 votes, thereby refusing to affirm by a large majority, to wit, a majority of 674, against affirming said contract; but notwithstanding these facts they aver that (after the official canvass of said vote on said contract was so made and declared) a clerical error was made in the record thereof in the election book. The record, so far as it related to said vote on said contract, reads as follows: " * * * and against ratification of the contract with the B. & M. R. R. Co. there were 1,388 votes cast. * * * For ratifying the contract with the B. & M. R. R. Co. 1,031 votes were cast. Against ratifying the contract with the B. & M. R. R. Co. 357. * * * Against ratifying the contract with the B. & M. R. R. Co.," all of which will fully appear from the record of the general election for October, 1871, at which said vote on said contract was taken, and
11 pl'ff here expressly alleges that errors were made in said record, and the same should read as follows: " * * * For and against ratification of the contract with the B. & M. R. R. Co. there were 1,388 votes cast. * * * For ratifying the contract with the B. & M. R. R. Co. 357 votes cast. Against ratifying 1,031. * * * Against ratifying the contract with the B. & M. R. R. Co. (See amendment filed 17 February, 1876, page 445 of Transcript.) And the pl'ff says she can have no adequate relief and remedy at law against such erroneous entries.

Pl'ff asks that all claims of the def't the B. & M. R. R. Co. in and to the lands and each and every parcel thereof which are embraced in Exhibit A hereto, which are based upon and derived or claimed from any act or acts of Congress, any certificate or certificates of State or Federal officers, and the location of their railroad, and which were in issue in the said action, wherein Mills County was pl'ff and the said company was def't, be declared to be res adjudicata and settled judicially against the said def't, The B. & M. R. R. Co., and in favor of Mills County, Iowa, and to have been fully and finally adjudicated and decided. That said proposition or supposed contract made and signed by the board of supervisors of Mills County for Mills County, and the def't The B. & M. R. R. Co. be held and declared to have been obtained by fraud and circumvention on the part of said railroad company, to be not the contract of Mills County, and that Mills County is not bound thereby, and that the same was and is illegal and void. That the board of supervisors had no authority thereby to bind Mills County; that the 5 deeds, copies of which are hereto attached as Exhibits C, D, E, F, and G, made in pursuance of said contract, are void, and that they are without consideration, made without authority or power in the board, and that the def't The B. & M. R. R. Co. acquired no right, title, or interest whatever in and to the lands described in said deeds by virtue of either said contract or either of said deeds. That the said 5 deeds be held and declared each to have been made without authority and without consideration, and to have been obtained by fraud, and to be void, and to have been no conveyance of the lands or any parcel or tract thereof therein contained and described by Mills County, Iowa, nor to be either of them the deed or act of
12 Mills County, and that the said railroad company and its assignees and grantees have acquired nothing thereby, and that the contract submitted to the voters of Mills County, Iowa, was not ratified or confirmed by such vote, but was by them dissented to and repudiated by

Mills County at said election, and ask for a correction of the official record of the canvass of said vote, and that the same may be corrected so as to show that there were cast against affirming the said contract 1,031 votes at said election, and for affirming but 357, and that the def'ts J. M. Forbes, H. P. Kidder, and J. N. A. Griswold have acquired by virtue of any of said deeds or said contract no interest in or lien upon any of the lands described in any of the exhibits, and that the claims of these def'ts to any and all of said lands be declared to be groundless and void, and for a judgment for costs in this behalf expended, and for such other and further relief as to the court may seem just and proper.

EXHIBIT A.

Description.	S.	T.	R.
W. h. NE	5	72	40
NE. NE	"	"	"
N. h. NW. q	"	"	"
SE. NW	"	"	"
SW. SW	"	"	"
N. h	7	"	"
SW. q	"	"	"
E. h. SE	"	"	"
NW. q	17	"	"
N. h	19	"	"
E. h. NW	1	73	"
SW. q	"	"	"
W. h. NW	3	"	"
W. h. SW	"	"	"
Section No	9	"	"
S. h. SE	11	"	"
NE. NE., SE	"	"	"
W. h	15	"	"
SE. q	"	"	"
S. h. NE	"	"	"
E. h. SW	17	"	"
W. h. SE	"	"	"
SE. SE	"	"	"
Section No	21	"	"
E. h	29	"	"
NW. q	"	"	40
13 E. h. SW	29	73	40
NW. SW	"	"	"
W. h	31	"	"
SE. q	"	"	"
W. h. NE	"	"	"
NE. q	"	"	"
Section No	9	71	41
NW. q	11	"	"
W. h. SW	"	"	"
NW. NE	"	"	"
Section No	15	"	"
NE. NE	17	"	"
E. h	21	"	"
SW. q	"	"	"
SE. NW	"	"	"
W. h	27	"	"
W. h. NE	"	"	"
W. h. SE	"	"	"
SE. q	29	"	"
E. h. NE	"	"	"
E. h. NW	"	"	"
E. h. SW	"	"	"
NW. SW	"	"	"
SE. q. SE. h	31	"	"
E. h	33	"	"
SW. q	"	"	"
E. h. NW. q	"	"	"
NW. q. NW	"	"	"
SE. q	1	72	"
E. h. SW	"	"	"
S. h	13	"	"
E. h. NE	13	72	41
NW. NE	"	"	"
S. h. NW	19	"	"
E. h	23	"	"
SW. q	"	"	"
E. h. NW	"	"	"
W. h	25	"	"
NE. q	27	"	"
E. h. SE	"	"	"
SW. q	29	"	"
E. h	35	"	"
SW. q	"	"	"
NW. NW	"	"	"
SW. SW	19	73	"
NE. q	1	"	42
N. h. SE	"	"	"
SW. q	"	"	"
NE. q	5	"	"
E. h. SW	"	"	"
E. h. NE	11	"	"
E. h. SE	"	"	"
NW. NW	31	"	"
E. h. NW	19	"	"
W. h. NE	"	"	"
W. h. SE	"	"	"
SE. SW	"	"	"
N. h. NE	25	73	42
NE. NW	31	"	"
SW. NE	"	"	"
NW. q	1	71	"
W. h. SE	"	"	43
N. h	3	"	"
SE. q	"	"	"
E. h. SW	"	"	"
NW. SW	"	"	"
NW. q	5	"	"
N. h. SW	"	"	"
S. h. NE	"	"	"
SE. q	"	"	"
W. h	9	"	"
W. h. NE	"	"	"
E. h. SE	"	"	"
N. h. NE	11	"	"
N. h. NW	"	"	"
S. h	17	"	"
W. h. NW	"	"	"
NE. NE	19	"	"
NW. q	21	"	"
W. h. SW	"	"	"
NW. NE	"	"	"
E. h	29	"	"
NW. NE	33	"	"
S. h. NE	"	"	"
SE. NW	"	"	"
SE. q	"	"	"
E. h. SW	"	"	"
W. h. SW	35	"	"
SE. SW	35	71	43
SW. SE	"	"	"
W. h	5	72	"
W. h. NE	"	"	"
SW. NW	7	"	"
SW	17	"	"
W. h	19	"	"
Section No	21	"	"
SW. SW	23	"	"
Section No	27	"	"
E. h	29	"	"
SW. q	"	"	"
W. h. NW	"	"	"
E. h	31	"	"
E. h	33	"	"
W. h. NE	"	"	"
W. h. SE	"	"	"
E. h	25	"	"
S. h. NW	35	"	"
NE. q	5	73	"
N. h. NW	"	"	"
NW. SE	"	"	"
SE. SW	"	"	"
W. h	7	"	"
SE. q	"	"	"
W. h. NE	"	"	"
SE. NE	35	73	43
E. h. NW	17	"	"
S. h. SW	"	"	"
NW. NW	19	"	"
SW. NE	"	"	"
E. h. SE	"	"	"
W. h. NE	31	"	"
W. h. SE	"	"	"
Section No	1	72	44
Lot No. 1	11	"	"
NE. NW	13	"	"
W. h. NE	"	"	"
NW. SE	"	"	"
NE. SW	"	"	"
E. h. NW	25	"	"
W. h. NE	"	"	"
W. h. SE	"	"	"
NE. SW	"	"	"
NE. NE	1	73	"
S. h. SE	"	"	"
SE. SW	"	"	"
E. h. NE	13	"	"
NW. NE	"	"	"
NE. SE	"	"	"
Lot No. 2	23	"	"
" 3	"	"	"
" 1	27	"	"
NE NW	35	"	"
Lot No. 1	"	"	"
" 2	"	"	"
" 3	"	"	"

All west of the 5th p. m., amounting in the aggregate to 23,325.87 acres.

14 EXHIBIT B.

MILLS COUNTY, IOWA,
vs.
THE B. & M. R. R. Co.

Now at this time this cause coming on to be heard and the court having heard and examined the allegations of the parties, the evidence submitted, and the arguments of counsel, and being fully advised in the premises, find the facts stated in the petition and amended petition herein to be true, and that the pl'ff is entitled to the relief therein prayed for: It is therefore ordered, adjudged, and decreed by the court that the title in fee simple to the lands described in the pl'ff's amended petition, to wit: (Here follows the list of lands which are contained in Exhibit A of the petition, to which this is attached as Exhibit B, amounting in the aggregate to 23,325$\frac{87}{100}$ acres), and every part and parcel thereof is legally vested in the pl'ff, Mills County, Iowa, and it is adjudged and decreed by the court that the said pl'ff is the owner in fee-simple of said lands and is entitled to the uninterrupted control, use, and enjoyment of the same, and it is further adjudged and decreed that the claim of the def't, to wit, the B. & M. R. R. Co., to said land and to each and every parcel thereof is illegal, null, and void, and it is further adjudged that the def't pay the costs of this suit, taxed at $47.15, and that execution issue therefor.

Read, approved, and signed April 17, 1866.

JAMES G. DAY, *Judge.*

15 EXHIBIT C.

For the consideration of one dollar, and for the purpose of carrying out the terms and stipulations of a contract heretofore made with the B. & M. R. R. Co., Mills County, State of Iowa, by her legal representatives and agents, does remise, release, and forever quitclaim to the said B. & M. R. R. Co. all her right, title, and interest in and to the following-described lands, situated in the county of Mills and State of Iowa, to wit:

Description.	S.	T.	R.	Description.	S.	T.	R.	Description.	S.	T.	R.
NE. NW	5	72	40	SW. NW	24	72	41	S. h. SW	35	71	43
NW. NE	"	"	"	NW. SW	"	72	41	SW. SE	35	71	43
S. h. SE	6	"	"	N. h. NE	26	72	41	NE. q	20	72	43
W. h. SE	7	"	"	SW. NE	"	72	41	E. h. NW	20	72	43
SW. q	8	"	"	SE. NE	"	72	41	E. h. SW	20	72	43
E. h	18	"	"	NW. NE	1	73	42	SE SE	02	72	43
E. h. NE	4	73	"	SE. SW	19	73	42	NE. NE	29	72	43
SE. q	"	"	"	W. h. NW	1	71	43	SW. SE	30	72	43
W. h. NE	9	"	"	E. h. NE	1	71	43	SE. SW	32	72	43
NW. q	10	"	"	NE. NW	2	71	43	NW. NE	18	73	43
W. h. SW	14	"	"	W. h. NW	2	71	43	SW. NE	19	73	43
E. h. SE	20	"	"	W. h. NE	3	71	43	NW. NW	19	73	43
SE. NE	"	"	"	NE. NE	4	71	43	NE. SE	19	73	43
S. h. SW	21	"	"	NW. NW	4	71	43	S. h. NW	20	73	43
SE. q	"	"	"	S. h. SE	4	71	43	NE. NW	20	73	43
SW. SW	22	"	"	S. h. NE	5	71	43	W. h. SW	20	73	43
N. h	28	"	"	N. h. NW	9	71	43	NE. NE	30	73	43
N. h. SW	"	"	"	NE. SW	17	71	43	SW. NE	30	73	43
W. h. SE	"	"	"	NW. SE	17	71	43	NE. SW	30	73	43
E. h. NE	29	"	"	SE. SE.	17	71	43	Lot No. 1	2	72	44
SW. NE	"	"	"	NE. NE	18	71	43	" " "	11	72	44
E. h. SW	"	"	"	NW. SE	20	71	43	NE. NE	12	72	44
SE. q	"	"	"	SW. NW	21	71	43	E. h. NW	12	72	44
SW. SW	2	71	41	W. h. SW	21	71	43	SE. SW	12	72	44
SW. SW	10	"	"	NE. SE	29	71	43	SW. SE	12	72	44
SE. NW	11	"	"	Lot No. 1	31	71	43	NE. SE	36	72	44
W. h. NE	28	"	"	SW. NE	34	71	43	Lot No. 4	36	72	44
SE. NW	"	"	"	NW. NW	34	71	43	" " 2	23	73	44
SE. NE	32	"	"	N. h. SE	34	71	43	" " 3	23	73	44
S. h	"	"	"	SE. SE	34	71	43	" " 1	26	73	44
SE. SW	33	"	"	NW. SW	35	71	43	NE. NE	36	72	44
W. h. SW., NE	2	"	"								

Containing in all 6,260 $\frac{55}{100}$ acres, be the same more or less.

In witness of which the said grantor hath hereunto set its seal,
16 and caused these presents to be signed by a majority of its board of supervisors, this 18th day of October, 1869.

[50 ct. rev. stamp.]

{ SEAL BOARD OF SUPERVISORS. }

SAMUEL ALLIS.
BENNETT CREECH.
FIELDEN UTTERBACH.
DAN'L C. BRIGGS.
MICHAEL D. LAMB.
SIMEON W. WILLIAMS.
BENJ. F. BUFFINGTON.
OLIVER C. FORESTER.

STATE OF IOWA, *Mills County, ss:*

On this 13th day of October, A. D. 1869, before me, William D. Davies, a notary public in and for said county, personally came Samuel Allis, Daniel C. Briggs, Benj. F. Buffington, Bennett Creech, Michael D. Lamb, Oliver C. Forester, Fielden Utterbach, and Simeon W. Williams, personally to me known to be the identical persons whose names are subscribed to the above deed as grantors, and acknowledged the execution of the same as members of the board of supervisors of said Mills County, to be their voluntary act and deed for the purposes therein expressed.

Witness my hand and notarial seal hereunto affixed at my office in Glenwood, Iowa, the day and year above written.

[NOTARIAL SEAL.] WILLIAM D. DAVIES,
Notary Public.

EXHIBIT D.

For the consideration of one dollar ($1), and for the purpose of carrying

out the terms and stipulations of a contract made with the B. & M. R. R. Co., the County of Mills, in the State of Iowa, does hereby remise, release, and forever quitclaim to the said B. & M. R. R. Co., all its right, title, and interest in and to the following lands, situated in the county of Mills, and State of Iowa, to wit:

Description.	S.	T.	R.	Description.	S.	T.	R.	Description.	S.	T.	R.
NW. q	5	71	43	E. h. SE	32	71	43	N. h. NE	33	72	43
N. h. NE	10	71	43	SW. q	17	72	43	NE. NW	33	72	43
E. h. NW	10	71	43	W. h. NW	20	72	43	W. h. NW	33	72	43
W. h. SW	17	71	43	W. h. SW	20	72	43	W. h. SW	33	72	43
SE. SW	17	71	43	W. h. NW	29	72	43	SE. SW	33	72	43
SW. SE	17	71	43	W. h. SW	29	72	43	E. h. NW	17	73	43
E. h. SE	20	71	43	W. h. NW	32	72	43	E. h. SW	17	73	43
W. h. NW	28	71	43	W. h. SW	32	72	43	E. h. NE	20	71	43
NW. SW	28	71	43								

Containing in all 1,960 acres, more or less.

17 In witness of which the said grantor hath hereunto set its seal, and caused these presents to be signed by a majority of its board of supervisors, this 18th day of October, A. D. 1869.

[50 ct. rev. stamp.]

{SEAL BOARD OF SUPERVISORS.}

SAMUEL ALLIS.
OLIVER C. FORESTER.
DAN'L C. BRIGGS.
FIELDEN UTTERBACH.
BENJ. F. BUFFINGTON.
SIMEON W. WILLIAMS.
MICHAEL D. LAMB.

STATE OF IOWA, *Mills County*:

On the 18th day of October, A. D. 1869, before me, William D. Davies, a notary public in and for said county, personally came Samuel Allis, Dan'l C. Briggs, Benj. F. Buffington, Michael D. Lamb, Oliver C. Forester, Fielden Utterbach, and Simeon W. Williams, personally to me known to be the identical persons whose names are subscribed to the above deed as grantors, and acknowledged the execution of the same as members of the board of supervisors of said Mills County to be their voluntary act and deed, and for the purposes therein expressed.

Witness my hand and notarial seal hereto affixed, at my office in Glenwood, Iowa, the day and year above written.

[NOTARIAL SEAL.] WILLIAM D. DAVIES,
Notary Public.

EXHIBIT E.

Know all men by these presents that for the consideration of one dollar, and in consideration of and in furtherance of a settlement of the swamp-land suit between the County of Mills and the B. & M. R. R. Co., the County of Mills, by her lawfully constituted agents, to wit, the

18 members of the board of supervisors of said county, now in regular session on the 4th day of January, 1870, do hereby sell, convey, release, and forever quitclaim unto the B. & M. R. R. Co. the following real estate, situated in Mills County, to wit:

Description.	S.	T.	R.	Description.	S.	T.	R.	Description.	S.	T.	R.
NE. NE	5	72	40	N. h. NE	23	72	41	SW. SE	26	72	41
SW. NE	"	"	"	SW. NE	"	"	"	E. h. NE	33	71	"
SE. NW	"	"	"	E. h. NE	31	"	43	SE. SW	15	"	"
SW. SW	"	"	"	E. h. SE	"	"	"	W. h. SE	"	"	"
SW. q	6	"	"	W. h. NE	24	"	41	E. h. SW	29	"	"
NE. NE	7	"	"	NW. NW	"	"	"	W. h. SE	"	"	"
S. h. NW	"	"	"	SE. NW	"	"	"	E. h. SW	1	73	42
NW. SE	17	73	"	NE. SW	"	"	"	NE. NW	31	"	"
SW. q	13	72	41	N. h. SE	26	"	"	SE. SW	26	72	43

In witness whereof we, the members of the board of supervisors, now in regular session, do hereby set our hands this 4th day of January, 1870.
[50 ct. U. S. rev. stamp.]

HENRY LLOYD.
D. M. WHITFIELD.
B. F. BUFFINGTON.
SAMUEL HARRISON.
LEWIS ROBBINS.
JOHNSON ORR.
SAMUEL ALLIS.
W. G. TEMPLETON.
NATHAN KERNEY.
BENNETT CREECH.

STATE OF IOWA, *Mills County:*

On this 6th day of January, A. D. 1870, before me, clerk of the district court in and for said county, personally appeared Johnson Orr, Samuel Allis, W. G. Templeton, Nathan Kerney, Bennett Creech, Henry Lloyd, D. M. Whitfield, B. F. Buffington, Samuel Harrison, and Lewis Robbins, personally to me known to be the persons whose names appear to the foregoing deed and members of the board of supervisors of said county and a majority of said board, and acknowledged that they signed and executed the foregoing deed as members of the board of supervisors of said county, and that the same is their voluntary act and deed.

Witness my hand and seal of said court, affixed at Glenwood, this date last above written.

[SEAL.] T. P. BALLARD, *Clerk.*

19 EXHIBIT F.

Know all men by these presents that the County of Mills, in the State of Iowa, by her legal representatives, the members of the board of supervisors of said county, at their regular September meeting for the year 1870, in furtherance of a settlement of a lawsuit pending in the Supreme Court of the United States, wherein the said County of Mills is pl'ff and the B. & M. R. R. Co. is def't, and for the further consideration of one dollar, do hereby sell, convey, and forever quitclaim unto the said B. & M. R. R. Co. all the right, title, and interest of the said County of Mills in and to the following described real estate, being and lying in the county of Mills and State of Iowa, to wit:

Description.	S.	T.	R.	Description.	S.	T.	R.	Description.	S.	T.	R.
N. h. NW.	7	72	40	NE. SW.	33	71	41	SE. SE	29	71	43
W. h. SW.	"	"	"	W. h. SW.	"	"	"	NE. NE	5	72	"
E. h. SE.	"	"	"	E. h. SE.	"	"	"	NW. SE	17	"	"
NW. q.	19	"	"	W. h. SE.	"	72	"	S. h. SE.	"	"	"
N. h. NE.	"	"	"	SE. NE.	23	"	"	SE. NW	19	"	"
SW. q.	9	73	"	NE. SE.	"	"	"	NW. SW.	27	"	"
NE. q.	21	"	"	NW. NW.	13	73	42	W. h. NE.	29	"	"
NW. SE.	22	"	"	W. h. NE.	19	"	"	W. h. NE.	31	"	"
SE. NW	29	"	"	W. h. SE.	"	"	"	W. h. SE.	"	"	"
N. h. NE.	31	"	"	W. h. SE.	1	71	43	S. h. SE.	33	"	"
SW. NE.	"	"	"	E. h. S.	3	"	"	NW. NW.	35	"	"
S. h. NW.	"	"	"	NW. q.	"	"	"	W. h. NE.	1	"	44
S. h. SE.	9	71	41	SE. q.	"	"	"	W. h. NE.	13	"	"
N. h. NW.	11	"	"	SE. q.	5	"	"	NE. NW.	"	"	"
W. h. NW.	15	"	"	NW. NE.	9	"	"	NW. SE	"	"	"
SE. SE	31	"	"	NE. SE.	17	"	"	NE. NE.	36	"	"

In testimony whereof we, a majority of the board of supervisors of said county, have hereunto set our hands this 6th day of September, A. D. 1870.

[50 ct. U. S. rev. stamp.]

W. G. TEMPLETON.
SAMUEL ALLIS.
LEWIS ROBBINS.
BENNETT CREECH.
HENRY LLOYD.
D. M. WHITFIELD.
B. F. BUFFINGTON.
JOHN ASQUIG.
NATHAN KERNEY.

STATE OF IOWA, *Mills County*:

On this 6th day of September, 1870, before me, H. C. Watkins, a notary public in and for said county, personally appeared Samuel Allis, John Asquig, Nathan Kerney, Bennett Creech, D. M. Whitfield, W. G. Templeton, Lewis Robbins, Henry Lloyd, and B. F. Buffington, personally to me known to be the persons whose names appear to the foregoing deed as grantors, and a majority of the members of the board of supervisors of Mills County, Iowa, and acknowledged the execution and signing of said deed to be their voluntary act and deed, and for the uses and purposes therein mentioned.

[NOTARIAL SEAL.]

H. C. WATKINS,
Notary Public.

EXHIBIT G.

Know all men by these presents that for the consideration of one dollar, and for the purpose of carrying out the terms of the agreement to settle the swamp land suit heretofore pending between the County of Mills and the B. & M. R. R. Co., the said County of Mills does hereby remise, release, and forever quitclaim to the said B. & M. R. R. Co. all her right, title, and interest in and to the following described lands, situated in the county of Mills, State of Iowa, to wit: E. ½ NE. 17, 72, 40, W. ½ SW. 28, 71, 41, W. ½ SW. 1, 71, 43, containing in all two hundred and forty acres, more or less, according to the U. S. survey.

In witness whereof the said grantor hath hereto set its seal and caused these presents to be signed by its board of supervisors this 19th day of June, A. D. 1871.

[50 ct. U. S. rev. stamp.]

B. F. BUFFINGTON,
BENNETT CREECH,
Comprising the Board of Supervisors of Mills County, Iowa.

STATE OF IOWA, *Mills County:*

Be it known that on this the 19th day of June, 1871, before me, the undersigned, notary public within and for the county and State aforesaid, personally appeared B. F. Buffington and Bennett Creech, personally to me known to be the identical persons whose names are subscribed to the foregoing deed as members of the board of supervisors of the grantor, the County of Mills, therein named, and being a majority of said board, and severally acknowledged the execution of said deed as their free and voluntary act and deed.

Witness my hand and seal notarial this 19th day of June, A. D. 1871.

[NOTARIAL SEAL.] H. C. WATKINS,
Notary Public, Mills County, Iowa.

21 EXHIBIT H.

Copy of the order of submission.

The following in relation to the submission of the question of contract with the B. & M. R. R. Co. was ordered and adopted, to wit:

Whereas, at the November session, 1868, of the board of supervisors of Mills County, Iowa, the proposition submitted to the B. & M. R. R. Co., together with the acceptance of the same by said company, was confirmed and ratified by said board; and whereas the question of making the disposition of the swamp land funds therein proposed has never been submitted to the people, as required by law: Therefore resolved by the board of supervisors of said county at the September session, 1871, and on the 5th day of said month, that there shall be submitted to the voters of Mills County at the ensuing general election, to be held on the 10th day of October, A. D. 1871, the question whether the amount of swamp land specified in said contract and the proceeds thereof to the amount of $10,000 shall be devoted to the purposes set forth in the following contract, to wit: (See contract on pages 265, 266, and 267 of this book.) Further resolved that the ballots cast at said election in the determination of said questions shall have written or printed or partly written and partly printed thereon either the words, "For ratifying the contract with the B. & M. R. R. Co.," or "Against ratifying the contract with the B. & M. R. R. Co." Further resolved that the auditor be directed to have these resolutions published in the Glenwood Opinion and Mills County Chronicle from this time until election.

EXHIBIT X.

In order to settle and finally adjust the lawsuit now pending in the Supreme Court of the United States, wherein Mills County, in the State

of Iowa, is pl'ff, and the B. & M. R. R. Co. is def't, and secure the completion of the said road through Mills County, via Glenwood, in said county, we, the authorized agents of said county, submit the following proposition to the board of directors of said railroad company, to wit:

There are in dispute between the parties to the said lawsuit twenty-three thousand three hundred and sixteen acres. For the purpose of having our proposition understood, we acknowledge that we owe you acres of land to the amount of 23,316; to pay which we have and offer you odd sections, vacant (most of which is a part of the 23,316 acres), and even sections patented to the county and unsold, in the aggregate, 9,080
22 acres; balance of the land due you, 14,236 acres. For further payment, we have and offer to you, of the odd sections (about all of which is of the 23,316 acres claimed by you), subject to pre-emption made through the county, acres to the amount of (on which nothing has been paid to the county) 4,660. Of these pre-empted lands, we estimate that about one-half of the pre-emptions are fraudulent, and ought not to be recognized, but the county must ask that where bona fide improvements have been made on the same the pre-emptors must be secured in their right to the same, and have the privilege of purchasing at $1.25 per acre, of the county or company, which amount shall, in any event, go to the railroad company. Now you will have land for land, subject only to the pre-emptors' claims, until there will be due you in acres 9,576.

The remainder, 9,576 acres, belong to bona fide settlers and purchasers, who, we must insist, shall be protected by the county; and as we have paid you all the land we have, we offer you for this balance ten thousand dollars in money.

The company should understand that the balance of 9,576 acres is the land portions of which it has been settling with our individual citizens for, and there is included in the 9,576 acres all the lands the company has sold to citizen-settlers, at $1.25 per acre. With this understanding, the $10,000 we offer you will be just as much less than 9,576 acres as the company has thus sold, and therefore our pay would perhaps amount to $1.50, or more.

It is understood that the suit now pending shall be continued, by agreement of the parties, from term to term, until the conditions of this contract or proposition shall have been complied with.

It is also further understood that the foregoing proposition shall not be binding on the county of Mills unless said railroad company shall complete said railroad through Mills County via Glenwood, and build a depot at Glenwood, in said county; and in case said railroad company shall fail or neglect to build said railroad through Mills County via Glenwood, and also to build and establish a depot at Glenwood, in that county, then, and in that event, the said lawsuit shall stand for final hearing in the Supreme Court of the United States, the same as if this proposition had never been made. In case the suit shall be settled on the basis of this proposition, each party shall pay their own costs. The manner of transferring the land, whether the county shall deal with the purchasers and pre-emptors, or whether the railroad company, under the restrictions indicated, the county is not particular about, but will agree to what may seem most practicable.

23 The amount in acres, as stated above, may not be exactly cor-

rect, and probably is not, but it is believed to be nearly so, but we wish it understood that the company shall have all the swamp lands the county now holds or is entitled to in Mills County, Iowa, subject only to the conditions indicated in the foregoing. Witness our hands this July 13, 1868.

WM. HALE,
E. C. BOSBYSHELL,
D. H. SOLOMON,
L. W. TUBBS,
Majority of the Committee.

BURLINGTON, IOWA, *October* 27, 1868.

This proposition is hereby accepted, and the terms, stipulations, and conditions are agreed to by the Burlington and Missouri River Railroad Company.

BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY,
By C. E. PERKINS, *Sup't.*

Notice of the acceptance of the within proposition by the Burlington and Missouri River Railroad Company has been served on us this 31st day of October, 1868.

D. H. SOLOMON,
E. C. BOSBYSHELL,
WM. HALE,
L. W. TUBBS,
Committee.

After giving the report due consideration, it is resolved by the board of supervisors of Mills County, Iowa, at their regular session in November, 1868, that the proposition submitted to the B. & M. R. R. Co., by our special railroad committee, and the acceptance of the same by the said company be, and the same is hereby, confirmed and ratified, and that the same be spread upon the records of this board.

The ayes and nays being called for, the vote stands as follows:

Ayes—Allis, Forrester, Haynie, Lamb, Utterback, Wing, Ward, Russell, Summers, and Mr. Chairman. Nays—none.

Original notice.

To the B. & M. R. R. Co., John M. Forbes, Henry P. Kidder, and John N. A. Griswold:

You, and each of you, are hereby notified that there is now on file in the office of the clerk of the district court of Mills County, Iowa, a petition of Mills County, Iowa, asking for a decree against you, declaring that a certain contract purporting to have been made between Mills County, Iowa, by the board of supervisors of said county, and you, the B. & M. R. R. Co., at the November term, 1868, of said board, in regard
24 to certain swamp lands of Mills County, and proceeds of the sales thereof is void, and that the five deeds made in pursuance of said contract, purporting to convey to you, said B. & M. R. R. Co., and signed by the board of supervisors of said Mills County, the fol-

lowing tracts and parcels of land situated in Mills County, Iowa, to wit: (Here follows list of lands, see Exhibits A, C, D, E, F, and G, to the original petition), are also void, and that the county of Mills is still the owner of said land, notwithstanding said deeds, asking to correct a mistake made in the record of official canvass of the vote on said contract, and to bar any claims that you, the other def'ts, may have in and to said lands by virtue of such contract, deeds, and vote, and for other equitable relief, and that unless you appear thereto and defend before noon of the second day of the next term of the district court of Mills County, Iowa, which is to be begun and held at the court-house in Glenwood, Mills County, Iowa, on the 9th day of February, 1874, default will be entered and judgment thereon rendered against you pro confesso.

D. H. SOLOMON,
Att'y for Pl'ff.

Return.

This notice came into my hands Jan. 29, 1874, and on the same day I served it on the within named def't, the B. & M. R. R. Co., by reading the same to William Kempton, an agent of said company, at Glenwood, Mills County, Iowa, and delivering to him personally a true copy thereof, John M. Forbes, Henry P. Kidder, and John N. A. Griswold not being found in said county. All done in Glenwood Township, Mills County, Iowa.

J. M. EVANS,
Sheriff of Mills County, Iowa.

Amendments to petition.

And on the 27th day of August, 1874, pl'ff filed amendment to petition as follows: (See page 67 of Transcript.) As an amendment to the petition heretofore filed herein, pl'ff claims of and from the def't the B. & M. R. R. Co. the sum of $5,000, which she alleges to be due her from the said def't, and for cause of such claim states that the said def't, the B. & M. R. R. Co., have had and received, collected, and converted to their own use at divers times divers sums of money which belong to this pl'ff as proceeds of the sales of swamp lands, amounting in the aggregate to the said sum of $5,000, but the exact amount thereof this pl'ff has been unable to ascertain, and the names of the persons by whom the said amounts were paid and the amounts and dates of payment, and the description of the lands on which the same was so paid this pl'ff has not been able fully to ascertain. Pl'ff states that the sum of $1,675 thereof was received by said def'ts at the dates and in the amounts, and from the persons, and on the lands as set forth and described in an exhibit which is hereto attached and marked Exhibit M. Pl'ff states further that the money so had and received by the said def's were and are proceeds of the sales of swamp and overflowed lands described in the petition to which this is an amendment, and that the said lands as set forth and described in an exhibit which is hereunto attached and marked Exhibit M. Pl'ff states further that the money so had and received by the said def't were and are proceeds of the sales of swamp and overflowed lands described in the petition to which this is an amendment, and that the said

lands and the proceeds of the sales thereof, as well as the lands which are conveyed by quitclaim to the said def't, the B. & M. R. R. Co., as set forth in the original petition herein, were and are a trust property and fund belonging to this pl'ff as trustee, and that this def't, the B. & M. R. R. Co., were, at the dates of the transactions described in the original petition and this amendment, charged with a full knowledge of the nature of said trust, and that the same was an unlawful diversion of a trust fund. Pl'ff prays, therefore, that the said def"t, the B. & M. R. R. Co., be required to make a full exhibit of the exact amounts of the funds and monies so received by them, giving the dates of receipt, the amounts and the names of the persons from whom the same were so received, and the description of the lands on which said amounts were so paid, and that the said def't pay back to the pl'ff all of said sums of money; that they, the said def'ts, be held and declared to hold the same for Mills County in trust, and for judgment against the said def't, the B. & M. R. R. Co., for the full amount above claimed of $5,000, or so much thereof as shall be found due and owing to them, and pl'ff reiterates the prayer of her original petition.

26 EXHIBIT M.

	Names of parties.	Description of lands. Parts of sections.	S.	T.	R.	Amount.	Date of receipt. Month.	Day.	Year.
1	George Plumb	NE. NW. & NW. NE ...	29	73	40	$100 00	January ..	28	1870.
2	Valentine Plumb..	N. h. NW	31	73	40	100 00	"	28	"
3	Isaac Meadows ...	NW. SE	31	73	42	50 00	February.	2	"
4	John Haynie	N. h. SW. & SE. NW ...	9	71	43	150 00	"	9	"
5	A. R. Wright	W. h. NW	17	71	43	100 00	"	17	"
6	Daniel Rhodes....	NW. NW.....	11	71	43	50 00	March	8	"
7	H. H. Woodrow...	W. h. NE	27	71	41	100 00	June	25	"
8	Julius Barnes.....	SW. SE. & SE. SW.....	1	72	44	100 00	July	27	"
9	John Johnson.....	SW. NE. & NE. SW.. NW. SE.	27	72	43	150 00	"	15	"
10	George Pack.....	NE. SE. & SE. NE	33	71	43	100 00	August ...	6	"
11	W. G. Summers...	SW.	9	71	41	200 00	April	19	1871.
12	W. H. Henton	NE. SW	13	72	44	50 00	May	24	"
13	W. H. Taft.	NE. SW. E. h., NW of SW.	35	72	41	75 00	June.....	6	"
14	H. W. Summers..	N. h. NE & NW.....	9	71	41	300 00	April.	19	"
15	S. D. Davis	NW. SW	29	71	41	50 00	February.	9	1870.
						$1,675 00			

27 And on the 30th day of December, 1874, pl'ff filed amendment to petition as follows (see page 83 of Transcript): Comes now the said pl'ff and amends her petition by adding to the style thereof the names of James W. Brooks and Alpheus Hardy as parties def't, and by inserting said names after the name of John N. A. Griswold, in the 8th subdivision of the first paragraph of the petition, and also after the name of said Griswold in the prayer of the petition; and said pl'ff further amends the petition by verifying the whole as set forth in affidavit appended (verified by affidavit of Lewis Robbins. See page 86 of Transcript).

And on the 26th day of August, 1875, the pl'ff filed the following amendment to petition, (see page 203 of Transcript): And now comes the said Mills County, pl'ff, and further amends the petition by making additional parties def't thereto, viz:

Samuel Masters, J. O. Munson, Daniel Henderson, Samuel Purcell, F.

M. Thomas, H. Fischer, The Town of Hastings, W. H. Eckley, Peter Eckley, Robert McMath, N. B. Thompson, Albert Hurshey, Wm. McCoy, Henry Perry, J. A. Boswell, George W. Newman, Strahn & Evans (J. M. Strahn and John Evans), B. F. Pickerell, George Plumb, Jas. H. McCabe, Norman Curtis, Emburt Petersen, Valentine Plumb, C. H. Darling, Samuel Starr, The Corporation of New Millery, George S. Wilson, Frank Hobbs, W. L. Roll, Wm. Antrim, Elias Antrim, J. Antrim, H. W. Summers, Chas. Ross, Josiah Wearin, S. G. Sidner, Eliza Van Kirk, Daniel Cavenaugh, Fred. Schlenig, L. Hanson, Thos. Wiles, A. H. Burger, Wm. E. Dean, E. W. Weeks, C. Epperson, W. Tressler, B. Gunsollier, Lucinda Wilson, George Morrow, T. S. Crewdson, D. H. Epperson, I. S. Wright, T. A. Wright, Aug. G. Sarge, Dennis Sheedy, Wm. Jones, John Haynie, J. V. Hinchman, T. Smith, J. S. Wright, P. L. Delashmut, John L. Buell, Lyman Cutler, J. Van Eaton, A. P. Cutler, Thos. Conner, James Queen, Jesse Buckingham, Benj. Buckingham, Adam Focht, R. Carter, A. Critz, Giles Hinson, H. C. Watkins, John Johnson, O. E. Allis, J. T. Hamilton, J. S. Runkles, Sherman L. Fletcher, Melissa J. Palmer, B. Glenn, J. F. Hendrie, Samuel Brothers, H. B. Jones, J. H. Fisher, S. D. Davies, E. Barnes.

28 And pl'ff here expressly reaffirms as against all the def'ts, including the additional def'ts aforesaid, all the matter contained in her original petition and in the several amendments thereto, including this amendment, and pl'ff here expressly states that she waives nothing of the matters heretofore averred, and pl'ff here further expressly avers that she is the owner in fee of all the lands described in her original petition and in this amendment thereto, but that she is now credibly informed and believes that the def'ts named in the body of this amendment and also in Exhibit X, hereto annexed, severally make some claim to the lands described in said exhibit set opposite their respective names therein adversely to the estate of pl'ff therein, which said claims and each of them are derived from a common source, and are all and singular junior and subject to the title of the pl'ff in and to the lands so claimed; and pl'ff here expressly refers to said Exhibit X, and makes it a part of this amendment.

(Exhibit X referred to above contains the names of aforesaid additional parties def't, and the description of the lands claimed by each. See page 210 of Transcript.)

Therefore pl'ff prays judgment and decree against all of the def'ts, as demanded in her original petition and in the amendments thereto; and further, pl'ff prays judgment and decree against the several additional def'ts named in the amendment, as follows: 1st. That the pl'ff's estate in the several tracts of land described in the said Exhibit X be established as against the adverse claims of the several def'ts whose names are set opposite said tracts respectively, and that said several def'ts be barred and forever estopped from having or claiming any right or title to said premises adverse to the pl'ff. 2d. That the pl'ff be given and granted, as against all of said additional def'ts, all other equitable relief, and that she have judgment for her costs herein expended.

(This amendment is duly verified.)

And on the 7th day of February, 1876, pl'ff filed amendment to her petition as follows (see page 371 of Transcript):

1st. Pl'ffs do here and now offer to the def'ts or any of them any

29 tax or taxes that may have been assessed, levied, or collected erroneously from them or either of them on any of the lands in controversy by reason of the same not being subject to taxation.

2d. That there is and for a long time has been needed funds with which to drain and reclaim swamp and overflowed lands in Mills County, Iowa, and that it will require all the funds that can be realized from the sale of all the lands in controversy to drain and reclaim the same, and make and establish the levees that are and will be needed for that purpose. Pl'ff reiterates all former statements and prayers herein made.

(This amendment duly verified.)

On the 30th of April, 1874, the def'ts, by Hale & Stone, attorneys, filed the following demurrer to the petition (page 64 of Transcript):

The def'ts demur to the petition herein for the reason that the facts stated in the petition do not entitle the pl'ff to the relief demanded.

On the 10th of December, 1874, Hale & Stone file disclaimer of appearance for certain def'ts as follows (page 80 of Transcript): "Comes now Hale & Stone, attorneys for said company, and say that they have not appeared for the other def'ts herein, and that in so far as the demurrer herein indicates such appearance the said indicated appearance is withdrawn. The failure to bind our appearance for the company only was an oversight and inadvertance, and we have no authority to appear herein, and have not had, for any party save the B. & M. R. R. Co."

On the 16th of February, 1875, def'ts, by Hale & Stone, attorneys, filed the answer of John M. Forbes and Henry P. Kidder (page 102 of Transcript): "Comes now the def'ts, John M. Forbes and Henry P. Kidder, and for answer herein for themselves alone say that the only interest they have ever had in the matters in controversy were as trustees under a certain mortgage, executed by the B. & M. R. R. Co. on the 1st
30 day of October, 1863. That on the 31st of January, 1872, the def't J. M. Forbes resigned his said trust, and on the 19th of April, 1873, the def't H. P. Kidder resigned his said trust, both of which resignations were duly accepted by the proper party; they therefore disclaim all interest in the matter in controversy in this action."

(Answer duly verified.)

On the 16th of February, 1875, the def'ts Brooks, Hardy, and Griswold, by Hale & Stone, attorneys, filed the following demurrer (page 106 of Transcript):

"Comes now the above named def'ts and demur to the petition herein and the amendments thereto, and as grounds thereof show to the court that the facts stated in the petition do not entitle the pl'ff to the relief demanded; wherefore these def'ts demand that as to them the petition be dismissed."

On the 13th of April, 1875, the def'ts, by Hale & Stone, attorneys, filed the following answer of the B. & M. R. R. Co. (page 126 of Transcript):

The defts the B. & M. R. R. Co., for its separate answer to the original petition herein, states:

1st. That it disclaims any and all interest in and to the lands in controversy in this action.

2d. That prior to the 31st of December, 1872, the said railroad company sold, by written contracts of purchase and sale, a large amount of the lands in controversy herein to persons who are not parties to this action.

3d. That in other cases it had sold and conveyed by proper deeds of conveyance a large portion of the lands herein involved to persons who are not parties to this action.

4th. That on the 31st of December, 1872, it sold, transferred, and set over to the C., B. & Q. R. R. Co. all its interest in and to the remaining portion of said lands, now sold as above specified; the said C., B.
31 & Q. R. R. Co. being a corporation duly organized under and by virtue of the laws of the State of Illinois; wherefore said def't asks to be dismissed with its costs.

(Answer duly verified.)

On the 13th of April, 1875, the def'ts, by Hale & Stone, attorneys, filed the following answer (page 131 of Transcript):

The def't the B. & M. R. R. Co., for answer to the pl'ff's amendment to the petition filed August 27, 1875, says it denies each and every allegation in said amendment contained.

On the 13th of April, 1875, the def't, by O. H. Browning and Hale & Stone, attorneys, filed the following answer of the C., B. & Q. R. R. Co. (page 134 of Transcript):

Comes now the C., B. & Q. R. R. Co. and files this its separate answer, and respectfully states:

1st. That it denies each and every allegation contained in pl'ff's petition not hereinafter admitted or that may be inconsistent with this answer.

2d. Said def't alleges that it is the owner in fee simple of all the lands in controversy in this action, which had not been sold by the B. & M. R. R. Co. prior to December 31st, 1872, or which by its consent and direction have been sold by the B. & M. R. R. Co. since December 31st, 1872.

3d. That a particular description of the lands described in pl'ff's petition which had been sold by the B. & M. R. R. Co. before December 31st, 1872, and which have been sold since with the consent and by direction of the C., B. & Q. R. R. Co., is hereto attached and marked Exhibits A and B, and made part of this answer.

4th. To the lands therein described this def't disclaims title or claim and all interest therein, except such interest as it may have by a failure of those or some of those persons who purchased of the B. & M. R. R. Co. under contracts to convey, and who may fail to perform their contracts.
32 5th. That all the remaining portions of the land described in pl'ff's petition is the property of the C., B. & Q. R. R. Co. by purchase from said B. & M. R. R. Co. on the 31st day of December, 1872, as shown by the instrument of writing selling and conveying the same, hereto attached and hereinafter more particularly referred to.

6th. That on the 13th day of July, 1868, there was pending in the Supreme Court of the United States a suit wherein Mills County, in the State of Iowa, was pl'ff and the B. & M. R. R. Co. was def't.

7th. That the lands in controversy in this action were, among others, in controversy in said action between the parties thereto.

8th. That long prior to the institution of said suit by Mills County, who is the pl'ff in this action, the said county had sold and conveyed, or contracted to convey, about 9,000 acres of the land in controversy in the suit that was pending in the Supreme Court of the United States, and undetermined on the 13th day of July, 1868.

9th. The said board of supervisors being in doubt as to the result of

said suit, at a regular session held a short time prior to July 13th, 1868 did, of their own accord and without the knowledge of the said B. & M. R. R. Co., appoint a committee composed of D. H. Solomon, L. W. Tubbs, E. C. Bosbyshell, and Wm. Hale, who were all citizens of Mills County at that time, and did authorize them, the said committee, to submit a proposition to the proper authorities of said railroad company for a settlement and final adjustment of the matters in controversy, and at that time pending on appeal in the Supreme Court of the United States as aforesaid.

10th. That in pursuance of said appointment and authority conferred as aforesaid D. H. Solomon, E. C. Bosbyshell, and Wm. Hale did proceed to the city of Burlington, in said State of Iowa, and on the 13th of July, 1868, they did submit to the proper authorities of said railroad
33 company a proposition for a compromise, settlement, and final adjudgment of the matters in controversy then pending in said suit in the Supreme Court of the United States, a copy of which is hereto annexed, marked Exhibit C, and made a part hereof. (For copy of this exhibit see Exhibit X, page 21 of Abstract.)

12th. That said proposition was made by said board of supervisors as aforesaid, in the city of Burlington, on the 13th day of July, 1868.

13th. That the same was respectfully entertained by the said B. & M. R. R. Co., and after due consideration the same was accepted, as made by said board of supervisors of Mills County, in due form, on the 31st day of October, 1868.

14th. That after said acceptance by said company as aforesaid, and due notice thereof given to said committee, the same was reported to said board of supervisors at the November session of said board, in the year 1868, and after giving the said report due consideration, the said contract was confirmed and ratified by said board and ordered to be spread upon the records of said board, a copy of which said order of said board is hereto attached, marked Exhibit D, and made a part hereof.

15th. That in the adjustment and settlement of said contract according to the terms thereof and intention of the parties thereto, the said board of supervisors of Mills County, Iowa, appointed H. C. Watkins and Wm. Hale to investigate and report to them such pre-emptions held from the county of Mills as were bona fide, and also such other lands as should be deeded by the B. & M. R. R. Co. to the county under the contract as provided by the terms thereof.

16th. That said B. & M. R. R. Co. appointed, on the part of said company, D. N. Smith and H. A. Copeland to represent said company in the adjustment and settlement of said contract, in accordance with the terms thereof and intention of the parties thereto.

34 17th. That said H. C. Watkins and Wm. Hale, on the part of Mills County, and said D. N. Smith and H. A. Copeland, on the part of said B. & M. R. R. Co., did, after giving the matter a full investigation, carefully examine, ascertain, and adjust the rights of all those who claim some interest in said lands, whether by pre-emption or purchase, and afterwards reported the same to said board of supervisor', and the result so reached, after careful examination, was duly approved by said board, and deeds to said lands were accordingly made from said railroad company to Mills County, a list of which is given in Exhibit E, hereto attached.

18th. That said railroad company did, on its part, comply with all its promises and obligations under said contract.

19th. That in pursuance of the duties and obligations devolving on Mills County under said contract, said county, by its proper authorities, did convey to said B. & M. R. R. Co. all the lands mentioned and described in the deeds attached to pl'ff's petition.

20th. That said county, by its proper officers, having thus conveyed to said railroad company said lands, as aforesaid, did assess and levy taxes thereon, and did place the same on the proper tax-books, as lands owned by the said B. & M. R. R. Co., for the years 1870, 1871, 1872, 1873, and 1874, and that said railroad company has paid, and the county treasurer of Mills County has executed and issued to said railroad company proper tax receipts for the taxes so assessed and levied against said railroad company on said lands, in full, for the years 1870, 1871, 1872, and 1873, and in this way and by these acts said county of Mills has for several years recognized the said B. & M. R. R. R. Co. as the proper owner of said lands mentioned and described in the deeds attached to pl'ff's petition, and by said acts, in the assessment, levy, and collection of several thousand dollars from said railroad company as taxes on said lands, which was paid by said company, for the years aforesaid, into the treasury of said Mills County, for its use and benefit, and said county having
35 thus derived an advantage by thus receiving from said railroad company several thousand dollars as taxes, as aforesaid, to the disadvantage of said company, and having thus recognized said railroad company as the owner of said lands, under the deeds made by Mills County to said railroad company, under the contract before mentioned, said Mills County is forever estopped from setting up or claiming title to said lands from said railroad company or its grantees.

21st. That long prior to the making of said contract of settlement and compromise, by and between Mills County and the B. & M. R. R. Company, said county, by its proper officers, assessed and levied taxes on several thousand acres of land in controversy in this action.

22d. That several hundred acres of the said land was sold by said county for the taxes delinquent thereon so assessed and levied, as above stated, from which said tax sales the said B. & M. R. R. R. Co. applied to the auditor of Mills County and offered to redeem said lands from such tax sales, as aforesaid, as the owner thereof, and that said auditor, recognizing said B. & M. R. R. Co. as owner of said lands so sold for delinquent taxes, and therefore entitled to redeem the same from such tax sales, did receive from said railroad company the amounts at various times necessary to redeem the same, and did issue and deliver to said railroad company proper certificates of redemption of said lands from such tax sales, and in thus effecting such redemptions said railroad company paid large sums of money, and by the acts of the auditor of Mills County, in accepting said redemptions and recognizing the said B. & M. R. R. Co. as the owner of said lands, the said Mills County is further estopped from setting up or claiming title to the lands in controversy in this action as against said B. & M. R. R. Co., or its grantee, a list of which said lands so redeemed is hereto attached, and marked Exhibit F, and made a part hereof.

23d. That the suit between Mills County, as pl'ff, and the B. & M. R. R. R. Co., as def't, which was, at the date of said compromise and settle-

ment, pending in the Supreme Court of the United States on appeal
36 from the supreme court of the State of Iowa, the matters in controversy, which were by said settlement compromised and finally adjusted and settled, was not stoutly contested by each party thereto, as alleged by pl'ff in her petition herein, but, on the contrary, neither party gave the same any further attention whatever after the said contract of settlement was entered into, except to direct the continuance thereof from term to term, as provided in said contract, and that the same was, on February 7th, 1870, ordered, on the motion of the said court, in the absence of and without the knowledge of either of the parties thereto, or their attorneys, to be submitted and abide the decree of said court, in a case pending thereinbefore in said court, wherein Fremont County, in the State of Iowa, was pl'ff, and the B. & M. R. R. Co. was def't, and in which issues were involved similar to those in the said case of Mills County against the B. & M. R. R. Co. That this action of the said court was without the knowledge or consent of either of the parties to said cause, and was therefore in contravention of the wishes and desires of the parties thereto, as expressed in said contract of settlement, and the subsequent acts and conduct of the parties in adjusting and carrying into effect and execution the said contract of settlement.

24th. That several thousand acres of the land in controversy in this action have been sold and conveyed by said B. & M. R. R. Co. to persons who are now citizens of Mills County, and who are now occupying and cultivating the same under such conveyances in good faith. That many of such deeds of conveyance have been spread upon the records of Mills County, and were so recorded prior to the institution of this action. That said Mills County has assessed and levied, by the proper officers thereof, taxes on many such lands so sold, as aforesaid, to persons who are grantees of the said B. & M. R. R. Co., and who hold and occupy said lands, under and by virtue of the contract of settlement and compromise between Mills County and said B. & M. R. R. Co. before mentioned, and said county has collected from such persons, who are grantees of the B. & M. R. R. Co., as aforesaid, large sums of money as taxes so assessed and levied on many of the lands described in the petition of pl'ff herein, and said pl'ff,
37 by such acts has held out to such persons, and all persons, that the title so held by said grantees of the B. & M. R. R. Co. was perfect and sufficient in both law and equity, and that by said acts and conduct of said Mills County said county has derived an advantage, to the disadvantage of other persons, and that said county is thus further estopped from asserting or claiming title to such lands as against the B. & M. R. R. Co. or its grantees.

25th. This def't, the C., B. & Q. R. R. Co., relying in good faith on the deeds and conveyances set out in pl'ff's petition herein, which said deeds had been recorded in the proper recorder's office of Mills County, Iowa, did, on the 31st day of December, 1872, for a valuable consideration then paid, and before the institution of this action, and without notice of any of the matters set forth in pl'ff's petition, purchase of the B. & M. R. R. Co. all the lands in controversy herein that had not been sold by the said B. & M. R. R. Co. prior to the last named date, a copy of which deed of conveyance is hereto attached, and marked Exhibit G, and made a part hereof.

26th. And said def't, the C., B. & Q. R. R. Co., further answering the

petition of pl'ff herein, says that the lands in controversy, in said suit between Mills County and the B. & M. R. R. Co., did, at the date of said compromise and settlement before mentioned, in truth and in fact belong to said company, and not to said county, and that said county at said date had no title thereto or legal or equitable interest therein; that they were not lands properly falling within the provisions of the act of Congress known as the swamp-land grant, approved September 28th, 1850; that they were all odd-numbered sections of land, lying within the limits and boundaries, as provided by the act of Congress entitled at act "making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," approved May 15th, 1856, and which said lands were selected in pursuance of an act of the general assembly of the State of Iowa, passed July 14th, 1856, entitled "An
38 act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State, approved May 15th, 1856,'" and in compliance with the requirements of section six of said act of the general assembly of the State of Iowa, above referred to, which section is in the words and figures following, viz:

Section (1303, Rev.) 6. "The lines and routes of the several roads above described shall be definitely fixed and located on or before the first day of April next after the passage of this act, and maps or plots, showing such lines and routes, shall be filed in the office of the governor of the State of Iowa, and also in the office of the secretary of state of the State of Iowa. It shall be the duty of the governor, after fixing his official signature, to file such map in the department having the control of the public land in Washington, such location being considered final only so far as to fix the limit and boundary within which lands may be selected; and if it shall appear that the lands that have been donated by the act of Congress aforesaid, for the construction of the several lines above indicated, cannot be obtained by said companies within the limits and along any part of the line aforesaid, the governor shall, from time to time, appoint agents to make such selections as may be authorized or granted by Congress for the lines aforesaid; but the compensation of such agents and the costs, expenses, and charges attendant upon and occasioned by making such selections, shall be fixed, regulated, paid, and borne by each of said railroad companies, respectively, upon and for its own line."

27th. And the def't, the C., B. & Q. R. R. Co., further says that the allegations in the petition, that the said B. & M. R. R. Co. were bound, as by a contract, with the State of Iowa, to build its line of road through Mills County, Iowa, by the way of Glenwood are not true, and they are hereby denied. The State of Iowa never made any contract with said B. & M. R. R. Co. by which the latter agreed to build its road upon any special, particular, or designated line. Nor did the State of Iowa ever require that the said road should be built upon any fixed or designated line. And this def't further alleges that the said State of Iowa spe-
39 cially exempted the said B. & M. R. R. Co. from building on any definitely fixed line, or any other line, by the act wherein it, the State of Iowa, accepted said grant. This def't further alleges that the grant of lands, by the act of Congress of May 15th, 1856, to the State of

Iowa, to aid in the construction of railroads, was accepted by the State of Iowa, by an act of the general assembly of said State passed July 14th, 1856, as aforesaid. That by the terms of the said act of the general assembly, in said section six (6) thereof, the line of the said B. & M. R. R. Co. was to be definitely fixed and located on or before the first day of April thereafter; but that such location should be considered final only so far as to fix the limit and boundary within which the lands granted as aforesaid were to be selected; that the State of Iowa never, by any terms, conditions, or otherwise, required that said B. & M. R. R. should be built upon any particular or designated line, nor did the said railroad company ever agree with the State of Iowa to build upon any such line.

28th. That said lands had never been patented to the State of Iowa, by virtue of the laws of Congress granting the swamp and overflowed lands to the States, but, on the contrary, the claim of the State of Iowa to said lands, as such swamp and overflowed lands, had been rejected by the Commissioner of the General Land Office, and by that officer said lands were certified in due form to the B. & M. R. R. Co. (which certification was duly approved by the Secretary of the Interior) as lands properly falling within the purview and meaning of the act of Congress aforesaid, approved May 15th, 1856, and which said lands had been selected, as aforesaid, with due reference to the line of said B. & M. R. R. located and definitely fixed on July 25th, 1856. That after the location of said line, as aforesaid, with reference to which said lands were shortly thereafter selected, the same were in October, 1856, duly withdrawn from sale by the Secretary of the Interior for the benefit of said B. & M. R. R. Co., and subsequently certified to said company, as aforesaid; and this def't further says that the said B. & M. R. R. Co., claiming and believing itself to be the owner of said lands, had, in good faith, sold and disposed of many tracts thereof to persons who settled thereon and improved the same, and that said company had bound itself to such persons to convey to them the titles to the lands so sold upon making payment of the purchase-money therefor; and that said Mills County had sold other tracts of said lands to other persons and in like manner had become bound to make conveyances therefor.

In this condition of things the purchasers from the county and company, respectively, were anxious and uneasy about their titles to their homes, and the settlement of the country was being hindered and delayed by the doubts and fears which surrounded the title, persons not knowing whether to purchase from the county or the company; and for the purpose of putting an end to litigation, quieting the fears and apprehensions of purchasers, encouraging and facilitating the settlement of the country, and saving the county and the company from the delays, vexations, and expenses of continued and harrassing litigation to both parties, the pl'ff in said action, Mills County, made to the said company the said proposition for a compromise, which was accepted in good faith by said company as a compromise, and only as a compromise, and which was regarded and treated as a compromise by both parties and as nothing else, and which was carried into effect by both of said parties by making mutual conveyances to each other, in accordance with the terms thereof; and after said compromise had so been made and carried into effect, and said county had made, executed, and delivered deeds to said company, conveying to it most of the lands which, by the terms of said compromise, it had agreed

to convey, said company gave no further attention to said suit then pending in the Supreme Court of the United States, believing that its title to said lands could not again be questioned or disturbed, whatever disposition might be made of said suit.

29th. And said def't further says that it is not true, as stated and charged in said petition, that said county was induced to offer and consum'ate said compromise, and to convey said lands to said company by fraud and misrepresentation, and by running "scare lines" through said county for the purpose of acting upon the fears of the people and influencing the action of the supervisors of said county.

41 30th. This def't, the C., B. & Q. R. R. Co., therefore prays that a decree be entered by this court, decreeing and forever quieting the title to the lands in controversy herein to and in this def't; that pl'ff's bill be dismissed, and for a judgment for costs.

(Said answer is duly verified.)

42 EXHIBIT A.

List of lands in controversy that had been sold by contract or deed of conveyance prior to December 31, 1872, by the B. & M. R. R. Co.

Parts of section.	S.	T.	R.	Date of sale.
NE. q. NE. q	5	72	40	November 3, 1870.
W. h. NE. q	"	"	"	September 5, 1870.
NE. q. NE. q	7	"	"	May 11, 1870.
E. h. NE. q	17	"	"	August 12, '72.
E. h. NE. q. and SE. q	4	73	"	May 9, '71; May 27, '72.
W. h. NE. q	9	"	"	January 4, '72.
W. h. SW. q	14	"	"	October 28, '70.
SE. q. NE. q	20	"	"	" 26, "
NE. q. SE. q	"	"	"	" " "
SE. q. SE. q	"	"	"	" " "
SE. q. NW. q	11	71	41	December 17, '63.
SE. q. SE. q	31	"	"	October 17, '71.
S. h	32	"	"	March 16, '71.
E. h. SE. q	33	"	"	August 29, '71.
E. h. SW. q	1	72	"	March 21, '64.
NW. q. NE. q	"	73	42	October 29, '70.
NE. q. NW. q	"	"	"	" 28, "
NW. q. NW. q	13	"	"	January 17, '70.
W. h. NE. q	19	73	"	January 27, '71.
SE. q. SW. q	"	"	"	October 24, '70.
W. h. SE. q	"	"	"	January 28, '71.
E. h. NW. q	1	71	43	July 15, '64.
W. h. NW. q	"	"	"	" " "
W. h. NE. q	3	"	"	January 30, '64.
SW. q. NE. q	5	"	"	October 27, '63.
SE. q. NE. q	"	"	"	" " "
N. h. SW. q	"	"	43	December 7, '63.
NW. q. SE. q	"	"	"	" " "
NE. q. SE. q	"	"	"	October 27, '63.
SW. q. SE. q	"	"	43	January 30, '64.
SE. q. SE. q	"	"	"	" " "
SW. q. NW. q	9	"	"	October 27, '63.
S. h. SW. q	"	"	"	" " "
E. h. SE. q	"	"	"	March 11, '64.
N. h. NE. q	11	"	"	January 30, '64.
NE. q. SW. q	17	"	"	" 29, "
N. h. SE. q	17	"	"	" " "
W. h. SW. q	"	"	"	November 6, '71.
SE. q. SW. q	"	71	"	August 26, '71.
SW. q. SE. q	"	"	"	" " "
SE. q. SE. q	"	"	"	October 27, '63.
NW. q. NW. q	21	"	"	" " "
SW. q. NW. q	"	"	"	" " "
NW. q. SW. q	"	"	"	" " "
SW. q. SW. q	21	"	"	January 29, '64.
SE. q. SE. q	29	"	"	October 27, '63.
N. h. SW. q	"	72	"	" 16, '73.
E. h. NW. q	17	73	"	January 29, '71.
E. h. SW. q	"	"	"	" 27, "
NE. q. NW. q	20	"	"	December 26, '71.
SW. q. SE. q	25	72	44	January 30, '64.

43

EXHIBIT B.

Swamp selections in controversy sold and warranted by the B. & M. R. R. Co. since December 31st, 1872.

Part of sec.	S.	T.	R.	To whom sold by R. R. Co.	Date of sale.	Acres.	Date of quit-claim Mills Co. to B. & M.
NE. NW	5	72	40	D. Henderson..	January 3, 1873	26.80	October 18, '69.
NE. NW	"	"	"	" "	" " "	40	January 6, '70
NE. SE	7	"	"	Strahn & Evans.	October 27, 1874	40	Sept. 6, '70.
NW. SE	"	"	"	" "	" " "	40	October 11, '69.
SW. SE	"	"	"	" "	" " "	40	" "
SE. SE	"	"	"	" "	" " "	40	" "
NE. SW	8	"	"	F. M. Thomas.	Sept. 2, "	40	" "
NW. SW	"	"	"	" "	" " "	40	" "
SW. NW	"	"	"	" "	" " "	40	" "
SE. SW	"	"	"	" "	" " "	40	" "
NE. NE	18	"	"	Jno. Evans, jr..	" 1, "	40	" "
NW. NE	"	"	"	" "	" " "	40	" "
SW. NE	"	"	"	" "	" " "	40	" "
SE. NE	"	"	"	" "	" " "	40	" "
NE. SE	"	"	"	" "	" " "	40	" "
NW. SE	"	"	"	" "	" " "	40	" "
SW. NE	"	"	"	" "	" " "	40	" "
SE. SE	"	"	"	" "	" " "	40	" "
NE. NE	19	"	"	Strahn & Evans.	October 24, "	40	Sept. 6, '70.
NW. NE	"	"	"	" "	" " "	40	" "
NE. SW	9	73	"	H. B. Thompson.	Decemb'r 8, 1873.	40	February 6, '70.
NW. SW	"	"	"	" "	" " "	40	" "
SW. SW	"	"	"	Wm. McCoy....	Nov. 17, "	40	" "
SE. SW	"	"	"	" "	" " "	40	" "
NE. NW	10	"	"	Jno. Whiteside	March 4, 1874.	40	October 18, '75.
NW. NW	"	"	"	" "	" " "	40	" "
SW. NW	"	"	"	" "	" " "	40	" "
SE. NW	"	"	"	" "	" " "	40	" "
NW. SE	17	"	"	G. W. Newman.	January 15, "	40	January 6, '70.
NE. NE	21	"	"	Strahn & Evans.	April 16, 1873 ..	40	Sept. 6, '76.
NW. NE	"	"	"	" "	" " "	40	" "
SW. NE	"	"	"	" "	" " "	40	" "
SE. NE	"	"	"	" "	" " "	40	" "
SW. SW	"	"	"	" "	January 9, '74..	40	October 18, '69
SE. SW	"	"	"	" "	" " "	40	" "
NE. SE	"	"	"	" "	April 16, '73....	40	" "
NW. SE	"	"	"	" "	" " "	40	" "
SW. SE	"	"	"	" "	January 9, '74..	40	" "
SE. SE	"	"	"	" "	" " "	40	" "
SW. SW	22	"	"	J. H. McCave..	August 14, '73..	40	" "
NE. SE	"	"	"	W. Coppock....	February 13, '74.	40	Sept. 6, '70.
NE. NE	28	"	"	Strahn & Evans.	June 9, '74.....	40	October 18, '69.
NW. NE	"	"	"	" "	" " "	40	" "
SW. NE	"	"	"	" "	" " "	40	" "
SE. NE	"	"	"	" "	" " "	40	" "
NE. NW	"	"	"	" "	" " "	40	" "
44 NW. NW	28	73	40	Strahn & Evans.	June 9, '74.....	40	October 8, '69.
SW. NW	"	"	"	" "	"	40	" "
SE. NW	"	"	"	" "	"	40	" "
NE. SW	"	"	"	" "	"	40	" "
NW. SW	"	"	"	" "	"	40	" "
NW. SE	"	"	"	" "	August 23, '73..	40	" "
SW. SE	"	"	"	" "	"	40	" "
NE. NE	29	"	"	" "	June 9, '74.....	40	October 18, '69.
SW. NE	"	"	"	" "	"	40	" "
SE. NE	"	"	"	" "	"	40	" "
SE. NW	"	"	"	" "	"	40	Sept. 6, '70.
NE. SW	"	"	"	" "	"	40	October 18, '69.
SE. SW	"	"	"	" "	"	40	" "
NE. SE	"	"	"	" "	"	40	" "
NW. SE	"	"	"	" "	"	40	" "
SW. SE	"	"	"	" "	"	40	" "
SE. SE	"	"	"	" "	"	40	" "
NE. NE	31	"	"	Norman Curtis..	January 10, '74..	40	Sept. 6, '70.
SW. NE	"	"	"	" "	" " "	40	" "
SW. NE	"	"	"	Lewis Robbins..	April 1, '74.....	40	" "
SW. NW	"	"	"	Val. Plumb.....	January 26, '74..	34.96	" "
SE. NW	"	"	"	" "	" " "	40	" "
SW. SW	10	71	41	Chas. H. Darlin.	August 12, '73..	40	October 18, '69.
SE. SW	15	"	"	Corp. N. Mill'y..	Sept. 5, '73.....	40	January 6, '70.
NW. SE	"	"	"	" "	" " "	40	" "
SW. SE	"	"	"	" "	" " "	40	" "
NW. NE	28	"	"	Eaton Barnes...	March 11, '74....	40	October 18, '69.
SW. NE	"	"	"	" "	" " "	40	" "
SE. NW	"	"	"	" "	" " "	40	" "

EXHIBIT B—Continued.

Part of sec.	S.	T.	R.	To whom sold by R. R. Co.	Date of sale.	Acres.	Date of quit-claim Mills Co. to B. & M.
NW. SW	"	"	"	Steph. P. Davis.	Nov. 4, '74	40	June 19, '71.
SW. SW	"	"	"	"	"	40	" "
NE. SW	"	"	"	"	October 15, 74	40	" "
SE. SW	29	"	"	"	"	40	" "
NW. SE	"	"	"	"	"	40	" "
SW. SE	"	"	"	"	"	40	" "
SE. NE	32	"	"	B. W. Sherman.	Nov. 4, '74	40	October 18, '69.
NE. SW	33	"	"	Warren L. Row.	October 1, '73	40	Sept. 6, '70.
SW. SW	"	"	"	W. E. Antrim.	June 21, 73	40	" "
SE. SW	"	"	"	Warren L. Row.	October 1, '73	40	October 18, '69.
NE. NE	26	72	"	Josiah Wearin.	May 5, '74	40	" "
NW. NE	"	"	"	"	"	40	" "
SW. NE	"	"	"	"	"	40	" "
SE. NE	"	"	"	"	"	40	" "
SW. NE	34	71	43	J. Buckingham.	Dec. 24, '73	40	" "
NW. NW	"	"	"	P. Buckingham.	"	40	" "
NW. SE	"	"	"	Adam Focht.	Nov. 18, '73	40	" "
SW. SE	35	"	"	R. H. Carter.	Nov. 9, '73	40	" "
SE. SW	26	72	"	Andreas Kretz.	Dec. 6, '73	40	January 6, '70.
NW. NW	29	"	"	Abr. Sherman.	October 2, '74	40	October 18, '69.
SW. NW	"	"	"	"	"	40	" "
45 NW. NW	33	72	43	H. M. Lewis.	Sept. 29, '74	40	October 18, '69.
SW. NW	"	"	"	"	"	40	" "
NW. NW	35	"	"	H. C. Watkins.	June 2, '74	40	Sept. 6, '70.
NE. SW	17	73	"	W. R. Wall.	Nov. 16, '74	40	October 18, '69.
SE. SW	"	"	"	"	"	40	" "
NW. NE	1	72	44	Bernard Glenn.	June 22, '74	31.04	Sept. 6, '70.
SW. NE	"	"	"	"	"	40	" "
SW. SE	"	71	43	E. L. Merritt.	Dec. 17, '74	40	
SW. SE	33	72	"	John Carter.	Nov. 16, 74	40	
SE. SE	"	"	"	"	"	40	

For Exhibit C see Exhibit X to the petition, pp. 21, 22, and 23 of this Abstract.

EXHIBIT D.

To the board of supervisors of Mills County:

The undersigned, appointed by the board of supervisors of Mills County, Iowa, to settle, adjust, and compromise the suit in relation to swamp lands in Mills County, Iowa, wherein Mills County, Iowa, is pl'ff and The B. & M. R. R. Co. is def't, beg leave to report that, in accordance with the authority and powers vested in us by your honorable body, we proceeded to the city of Burlington, Iowa, and there submitted to said railroad company the proposition hereto appended, and which was on the 31st day of October, 1868, accepted by said railroad company, and which we now submit to your honorable body for approval and ratification.

Respectfully submitted November 9th, 1868.

(Signed) E. C. BOSBYSHELL.
WM. HALE.
D. H. SOLOMON.
L. W. TUBBS.

After giving the report due consideration, it is resolved by the board of supervisors of Mills County, Iowa, at their regular session in November, 1868, that the proposition submitted to the B. & M. R. R. Co. by our special railroad committee, and the acceptance of the same by the said

company, be, and the same is hereby, confirmed and ratified, and that the same be spread upon the records of this board.

The ayes and nays being called for, the vote stands as follows:

Ayes—Allis, Forrester, Haynie, Lamb, Utterback, Wing, Ward, Russell, Summers, and Mr. Chairman. Nays—none.

46 EXHIBIT E.

List of lands deeded by the B. & M. R. R. Co. to Mills County, Iowa, under the contract of settlement.

Part of section.	S.	T.	R.	To whom sold by R. R. Co.	Date of sale.	Kind of sale.	Acres.	Remarks.
NW. NW	5	72	40	Mills Co., Iowa.	October 13, 1869	Q. C.	26. 92	Recorded in book 23, p. 184.
W. h. NW	17	"	"	"	"	"	80	
S. h. NE	19	"	"	"	"	"	80	
E. h. NW	1	73	"	"	"	"	75. 25	
W. h. NW	3	"	"	"	"	"	75. 85	
W. h. SW	"	"	"	"	"	"	80	
NE. SE	11	"	"	"	"	"	40	
S. h. SE	"	"	"	"	"	"	80	
SE. NE	15	"	"	"	"	"	40	
NW	"	"	"	"	"	"	160	
SE	"	"	"	"	"	"	160	
S. h. SE	17	"	"	"	"	"	80	
N. h. SW	21	"	"	"	"	"	80	
NW. NW	29	"	"	"	"	"	40	
SE	31	"	"	"	"	"	160	
SE. SW	"	"	"	"	"	"	40	
S. h. NE	9	71	41	"	"	"	80	
N. h. SE	"	"	"	"	"	"	86	
SW. NW	11	"	"	"	"	"	40	
W. h. SW	"	"	"	"	"	"	80	
NE	15	"	"	"	"	"	160	
E. h. SE	"	"	"	"	"	"	80	
NE. NE	17	"	"	"	"	"	40	
NE	21	"	"	"	"	"	160	
SW	"	"	"	"	"	"	160	
SE	"	"	"	"	"	"	160	
SW	27	"	"	"	"	"	160	
W. h. SW	"	"	"	"	"	"	80	

47 EXHIBIT E—Continued.

Part of section.	S.	T.	R.	To whom sold by R. R. Co.	Date of sale.	Kind of sale.	Acres.	Remarks.
SE. SW	27	71	41	Mills Co., Iowa.	Oct. 13, '69....	Q. C.	40	
E. h. NE	29	71	41	"	"	"	80	
E. h. NW	29	71	41	"	"	"	80	
E. h. SE	29	71	44	"	"	"	80	
W. h. NE	33	71	41	"	"	"	80	
N. h. NW	33	71	41	"	"	"	80	
W. h. SE	33	71	41	"	"	"	80	
SE. SE	1	72	41	"	"	"	40	
SE. NW	19	72	41	"	"	"	40	
SW. SE	19	72	41	"	"	"	40	
E. h. NW	23	72	41	"	"	"	80	
SW	23	72	41	"	"	"	160	
W. h. SE	23	72	41	"	"	"	80	
NE	25	72	41	"	"	"	160	
NW	25	72	41	"	"	"	160	
E. h. SW	25	72	41	"	"	"	80	
NE	27	72	41	"	"	"	160	
E. h. SE	27	72	41	"	"	"	80	
SW	29	72	41	"	"	"	160	
NW. NW	35	72	41	"	"	"	40	
W. h. NW. SW	35	72	41	"	"	"	20	
S. h. SW	35	72	41	"	"	"	80	
SE	35	72	41	"	"	"	160	
SW. SW	19	73	41	"	"	"	35.17	
S. h. NE	1	73	42	"	"	"	80	
W. h. SW	1	73	42	"	"	"	80	
N. h. SE	1	73	42	"	"	"	80	
NE	5	73	42	"	"	"	154	
E. h. SW	5	73	42	"	"	"	80	
E. h. NE	11	73	42	"	"	"	80	
E. h. SE	11	73	42	"	"	"	80	
E. h. NW	19	73	42	"	"	"	80	
SW. NE	31	73	42	"	"	"	40	
SW	3	71	43	"	"	"	160	
NE. NE	9	71	43	"	"	"	40	Recorded in book 23, page 184.
SW. NW	9	71	43	"	"	"	40	
S. h. SE	9	71	43	"	"	"	80	
NE. NW	11	71	43	"	"	"	40	
NE. NE	19	71	43	"	"	"	40	
NW. NE	21	71	43	"	"	"	40	
NE. NW	21	71	43	"	"	"	40	
SE. NW	21	71	43	"	"	"	40	
SW. NW	27	71	43	"	"	"	40	
SW. SW	27	71	43	"	"	"	40	
E. h. NE	29	71	43	"	"	"	80	
W. h. SE	29	71	43	"	"	"	80	
N. h. NE	33	71	43	"	"	"	80	
SE. NW	33	71	43	"	"	"	40	
E. h. SW	33	71	43	"	"	"	80	
NW. SE	33	71	43	"	"	"	40	
S. h. SE	33	71	43	"	"	"	80	
48 W. h. NE	5	72	43	Mills Co., Iowa.	Oct. 13, '69....	Q. C.	71.06	
NW. NE	5	72	43	"	"	"	141.85	
W. h. SW	5	72	43	"	"	"	80	
SE. SW	5	72	43	"	"	"	40	
SW. NW	7	72	43	"	"	"	41.51	
NE. SE	17	72	43	"	"	"	40	
NE. NW	19	72	43	"	"	"	40	
W. h. NW	19	72	43	"	"	"	80.31	
NE	21	72	43	"	"	"	160	
NW	21	72	43	"	"	"	160	
SW	21	72	43	"	"	"	160	
SW. SW	23	72	43	"	"	"	40	
E. h. NE	27	72	43	"	"	"	80	
SW. SW	27	72	43	"	"	"	40	
NE. SE	27	72	43	"	"	"	40	
E. h. NW	27	72	43	"	"	"	80	
E. h. SW	27	72	43	"	"	"	80	
W. h. SE	27	72	43	"	"	"	80	
SE. NE	33	72	43	"	"	"	40	
SE. NW	33	72	43	"	"	"	40	
NE. SE	33	72	43	"	"	"	40	
NE. NW	35	72	43	"	"	"	40	
S. h. NW	35	72	43	"	"	"	80	
SE	35	72	43	"	"	"	160	
SE. NE	19	73	43	"	"	"	40	
W. h. NE	31	73	43	"	"	"	80	
W. h. SE	31	73	43	"	"	"	80	
E. h. NE	1	72	44	"	"	"	71.04	Recorded in book 23, page 184.

EXHIBIT E—Continued.

Part of section.	S.	T.	R.	To whom sold by R. R. Co.	Date of sale.	Kind of sale.	Acres.	Remarks.
W. h. NW	1	72	44	"	"	"	53.02	About.
SE. NW	1	72	44	"	"	"	40	
N. h. SW	1	72	44	"	"	"	52.60	
SW. SW	1	72	44	"	"	"	25.10	
NE. SE	1	72	44	"	"	"	40	
W. h. NE	25	72	44	"	"	"	80	
E. h. NE	13	73	44	"	"	"	80	
NE. SE	13	73	44	"	"	"	40	
E. h. NW	13	73	44	"	"	"	80	
NW. NW	13	73	44	"	"	"	40	Fr. short.
NE. SW	13	73	44	"	"	"	13.04	
W. h. SE	13	73	44	"	"	"	47.13	
NW. NE	29	73	40	"	Jan. 30, 1871..	"	40	2d deed.
SW. NW	29	73	40	"	"	"	40	Recorded book 13, at p. 304.
NE. NW	29	73	40	"	"	"	40	
NW. SW	29	73	40	"	"	"	40	
N. h. NW	31	73	40	"	"	"	74.65	
N. h. NE	9	71	41	"	"	"	80	
NW	9	71	41	"	"	"	160	
SW	9	71	41	"	"	"	160	
W. h. NE	27	71	41	"	"	"	80	
NW. SE	27	71	41	"	"	"	40	
NE. SW	27	71	41	"	"	"	40	
49 NW. SW	29	71	41	Mills Co., Iowa.	Jan. 30, 1871..	Q. C.	40	
SE. NW	33	71	41	"	"	"	40	
NE. SW	35	72	41	"	"	"	45	
E. h. NW. SW	35	72	41	"	"	"	20	
NE	35	72	41	"	"	"	160	
N. h. NE	25	73	42	"	"	"	80	
NW. SE	31	73	42	"	"	"	40	
N. h. SW	9	71	43	"	"	"	80	
SE. NW	9	71	43	"	"	"	40	
NW. NW	11	71	43	"	"	"	40	
W. h. NW	17	71	43	"	"	"	80	
W. h. NE	29	71	43	"	"	"	80	
S. h. NE	33	71	43	"	"	"	80	
NE. SE	33	71	43	"	"	"	40	
SE	21	72	43	"	"	"	160	
SW. NE	27	72	43	"	"	"	40	
NW	27	72	43	"	"	"	160	
E. h. SW	27	72	43	"	"	"	80	
NW. SE	27	72	43	"	"	"	40	
E. h. SE	27	72	43	"	"	"	80	
SW. SE	1	72	44	"	"	"	40	
SE SW	1	72	44	"	"	"	40	
NE. SW	13	72	44	"	"	"	40	
NE. SW	25	72	44	"	"	"	40	
NW. SE	25	72	44	"	"	"	40	
Lot No. 1	27	73	44	"	"	"	12.60	
SW. NW	35	73	44	"	"	"	11.10	
SW	15	73	40	"	"	"	160	
NW	21	73	40	"	"	"	160	

Recorded in book 13, page 304.

50

EXHIBIT F.

Swamp selections by Mills County to the B. & M. Railroad returned from tax sale by the B. & M.

Parts of section.	S.	T.	R.	Date of sale for taxes.	Years sold.	Date of redemption.	Am't paid for redemption.
SW. NE	15	72	40	Dec. 14, '66...	'60 to '62	Dec. 10, '66	$18 52
NE. NE	7	"	"	"	'59 to '62	"	18 52
NW. SE	17	73	"	Dec. 14, '63....	"	"	18 50
NE. SE	23	72	41	"	'60 to '62	Dec. 12, '66.....	13 11
NW. SW	17	"	43	"	'58 to '62	" 6,	22 62
SW. SW	"	"	"	"	"	"	22 62
NW. SW	20	"	"	"	'57 to '62	"	33 16
SW. SW	"	"	"	"	"	"	33 16
NE. NE	31	"	"	October 3, '64	'58 to '63	October 2, '67...	37 71
SE. NE	"	"	"	"	"	"	37 71
NE. SE	"	"	"	"	"	"	37 71
SE. SE	"	"	"	"	"	"	37 71
NE. NW	17	73	"	Dec. 14, '63....	'58 & '60 to '62.	Dec. 10, '66.....	30 33
SE. NW	"	"	"	"	"	"	22 56
NE. SW	"	"	"	"	'59 to '62	"	25 03
SE. SW	"	"	"	"	"	"	25 04
							$400 34

EXHIBIT G.

This indenture of lease and agreement, concluded this 31st day of December, A. D. one thousand eight hundred and seventy-two (1872), by and between the B. & M. R. R. Co., a corporation organized under the laws of the State of Iowa, of *of* the first part, and the C., B. & Q. R. R. Co., a corporation created and organized by and under the laws of the State of Illinois, of the second part:

Whereas the C., B. & Q. R. R. Co. is the owner of and maintains and operates a main line of railroad extending from Chicago to Burlington, and is also the owner of various other lines of railroad, both main and branch, situated in the States of Illinois and Iowa, with their appurtenances, and the B. & M. R. R. Co. is the owner of a main line of railroad extending from the city of Burlington to a point on the Kansas City, St. Joseph and Council Bluffs Railroad, about fifteen miles from Council Bluffs, Iowa, and in virtue of a leasehold from that company runs its trains over that road into Council Bluffs, and is also the owner or

51 lessee of certain branch railroads connecting with its main line, which it maintains and operates, with their appurtenances, all situated in the State of Iowa; and

Whereas said main lines of railroad of said companies as now constructed and operated, constitute one continuous line of railroad from Chicago, by way of Burlington, to Plattsmouth and Council Bluffs, on the Missouri River, and it is believed to be for the mutual interest of the two companies that the same should be owned, maintained, and operated by a single corporation, and that to secure this end, the stock, property, rights, privileges, and franchises of the one should be managed and controlled by the other; and

Whereas, with this view, meetings of the respective boards of directors of said corporations were duly called and held on the third day of Oc-

tober, A. D. eighteen hundred and seventy-two (1872), at which the lease and agreements herein contained were considered and agreed upon, subject to ratification by the stockholders of said companies, respectively, and as a part of such agreement, it was arranged that the share values of the respective stocks should be equalized by the distribution, by the said second party, of twenty-five per cent. on the capital stock, in the seven per cent. bonds of this company to its stockholders, and afterwards, at meetings of stockholders of said respective corporations, duly called and held for that purpose, the terms of said lease and agreements were approved and ratified, and the execution of this instrument recommended, and at previous meetings of said respective boards of directors, the presidents and secretaries of said companies were directed to execute this agreement and carry the same into effect, provided the same should be ratified by the stockholders, as aforesaid:

Now, therefore, this instrument witnesseth that the party of the first part, to accomplish the objects aforesaid, and in consideration of the stipulations and agreements herein contained, to be kept and performed by said second party, has granted, demised, and leased, and does hereby grant, demise, and lease, in perpetuity, to the said party of the second part, its successors and assigns forever, all and singular, its railroad, situated in the State of Iowa, extending from Burlington, on the Mississippi River, to Plattsmouth, on the Missouri River, constructed and to be constructed, and all branches connected therewith, owned or controlled by it, all rights of way, depot and other lands or interests therein, connected with said railroad or branches, all station-houses, shops, offices and other build-
52 ings and structures of whatsoever kind, belonging thereto, or used in connection therewith, together with all fixtures and appurtenances belonging to said railroad, branches, or other property, or in any manner connected therewith; all the equipment of said railroad and branches, including engines, cars, and all other rolling-stock, and all tools, machinery, materials, and every other matter or thing connected with the equipment of said railroad or branches; all rights, privileges and franchises of said party of the first part in and to the aforesaid railroad, branches, or other property now held, used, or controlled by it, or which it may hereafter acquire or become entitled to, together with all other property of every kind and description belonging to or appurtenant to said railroad, branches, and to other property, and its right, title, and interest in and to the same, and to every part thereof.

And the said party of the first part, also, for the aforesaid considerations, hereby grants, bargains, sells, assigns and transfers to said second party, its successors and assigns, all the lands heretofore granted to it by the general government, now remaining unsold, and amounting to about two hundred thousand acres, more or less, and all other, the lands and real estate of said first party owned or possessed by it, or to which it may be or become entitled, and all title and interest it may have therein; all contracts, evidences of indebtedness, received or held for land heretofore sold by said party of the first part; also all moneys, notes, accounts, evidences of debt, choses in action, and all other the personal property of said first party, of whatsoever kind, and wheresoever situated. Also, all leases of branch roads or connecting roads, or any part thereof, now held and possessed by said party of the first part.

To have and to hold the said leasehold premises, railroad branches, rights, privileges, and franchises, in perpetuity, as aforesaid, and said lands and interests in real estate, leases, moneys, contracts, evidences of debt, choses in action, and other property above mentioned, or intended to be conveyed hereby to said party of the second part, its successors and assigns, forever, as fully, in all respects, as said party of the first part might have held, used, controlled, or enjoyed the same had this instrument not been made, with full power and authority to collect, receive, have, and use all the rents, proceeds, profits, and income thereof, and all moneys and revenues to be derived therefrom, and appropriate the same in such manner as it or they may deem best, and as shall be consistent with the interests hereof, with full authority to the said second party in the
53 management and disposition of the railroad and property herein mentioned to use the name and seal of said first party as full in all respects as it could do had this instrument not been made.

And the said first party also agrees to keep up its corporate organization until the complete and absolute union and consolidation of the stock and properties of the two companies, as contemplated by the parties, shall be effected, the cost of the maintenance of such organization, however, to be paid by the second party.

The said party of the second part, in consideration of the premises, does hereby covenant and agree with the said party of the first part, its successors, and assigns, to take immediate possession of said demised railroad and other property herein granted, and to keep said railroad and branches equipped, and maintain and operate the same in such manner as to furnish reasonable accommodations to the public; to pay or cause to be paid all taxes or assessments that may be lawfully levied, charged, or assessed on said railroad and property, or any part thereof; to assume all leases, contracts, bonds, and other obligations of whatsoever kind; to pay and discharge all debts and liabilities of every nature, both principal and interest, of said party of the first part as they shall severally mature; to make to the stockholders of said party of the first part, and to the stockholders of its respective branches, the same and same amount of dividends per share that it shall make to its own stockholders, and also to grant and secure to them, respectively, the same benefits and emoluments of every description that its own stockholders may receive, have, or become entitled to.

Provided, however, that the holder of any of the convertible bonds of said first party who may elect to convert the same, and thus become a party to this arrangement, shall receive by way of dividend on the stock obtained by such conversion only such pro rata proportion of any dividend declared next after such conversion as the interval between the date of such conversion and the date of the payment of such dividend bears to the interval between the last dividend of said corporation and the one in which the party so converting may be entitled to participate, and the certificate of stock to be issued on such conversion shall be qualified accordingly.

It is hereby mutually agreed by and between the parties hereto to execute and deliver such further conveyances, papers, and authority as counsel shall deem necessary to more completely effect the objects sought, and to carry out the intention of the parties to this instrument.

54 In witness whereof the parties hereto have caused this instrument to be signed by their respective presidents, and their respect-

ive seals to be hereto attached, and attested by their secretaries, the day and year first above written.

BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY,

{ BURLINGTON AND MISSOURI R. R. R. CO. SEAL. } (Signed) By J. W. BROOKS, *President.*

Attest:

J. N. DENISON, *Ass't Sec'y.*

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,

{ CHICAGO, BURLINGTON AND QUINCY RAILROAD CO. } (Signed) By J. M. WALKER, *President.*

Attest:

A. T. HALL, *Secretary.*

(Duly acknowledged.)

On the 13th of April, 1875, def'ts, by Hale & Stone, attorneys, filed the following answer of Brooks, Hardy, and Griswold (p. 170 of Transcript):

1st. That on December 13, 1874, and for many years prior thereto, the def'ts Brooks and Hardy were citizens of the State of Massachusetts, and the def't Griswold was a citizen of the State of Rhode Island, and said def'ts have been citizens of said States, respectively, ever since said date; that at said time the pl'ff was and has ever since continued to be a citizen of Iowa.

2d. That on the said 13th day of December, 1874, these def'ts filed their bill in equity in the circuit court of the United States for the district of Iowa, at Des Moines, in a cause wherein these def'ts are complainants, and the said Mills County, Iowa, is def't.

3d. That at the time of the institution of and process of service in the last-mentioned suit in said circuit court this court had no jurisdiction of the persons of these def'ts, for the reason that there was no service upon them, either by personal service or by publication, and they had not voluntarily appeared herein.

55 4th. That on December 14th, 1874, proper process by a subpœna in chancery issued out of the office of the clerk of the circuit court of the United States for the district of Iowa, was duly served according to law and the practice of the federal courts on the pl'ff above named, of the pendency of said cause in said federal court, commanding the said pl'ff herein to appear and plead to said bill by Monday, February 1, 1875.

5th. That service on these def'ts in this cause was not completed until the 28th of January, 1875.

6th. That the pl'ff has appeared in obedience to said subpœna and pleaded to said bill.

7th. That in said bill the def'ts have asserted their rights in the matters in controversy. That this court ought not to take cognizance of said matters for the reason that no allegations are contained in the petition herein putting in or presenting an issue as to these def'ts; that the rights, claims, interests, and obligations of these def'ts are not set up or shown by said petition, and as to them this court has acquired no jurisdiction of the subject-matter.

8th. That proper process was had in said cause in the said circuit court to bring the pl'ff into court therein before the completion of service on

these def'ts in the cause in this court and said circuit court is still pending and undetermined. Therefore these def'ts pray that the court dismiss the petition herein and the amendments thereto as to these def'ts, and that a decree be entered that this court has no jurisdiction of the persons of these def'ts or of the subject-matter of any suit as to them.

(Answer duly verified.)

On the 26th of August, 1875, John Evans, jr., one of def'ts herein, claiming the E. ½ of sec. 18, T. 72, R. 40 W., filed petition, asking to be allowed to intervene (pp. 184 and 238 of Transcript); and on Sept. 6, 1875, said Evans filed petition and bond, praying for the removal of said cause, so far as same related to himself and said tract, to U. S.
56 circuit court, which petition was granted, and cause removed as prayed for (pp. 216, 227, and 238 of Transcript).

On the 17th of Sept., 1875 def'ts Brooks, Hardy, and Griswold, by Hale & Stone, attorneys, filed the following amendment to their answer herein (p. 232 of Transcript): that in said proceedings in the circuit of the U. S. the said def'ts Brooks, Hardy, and Griswold are complainants and said Mills County, Iowa, is respondent.

2d. That the subject-matter of that controversy is the same as these def'ts would set up in this answer as to their rights in the matters in controversy.

3d. The relief sought in that proceeding is the same as that which they would seek in this case, if they should be compelled to show their rights herein.

On Dec. 23, 1875, def't Giles Hinson, by Hale & Stone, attorneys, filed answer, in substance, as follows (p. 241 of Transcript):

That he owns by purchase from the B. & M. R. R. Co. the W. ½ of S. W. ¼ of 29, 72, 43; that the same has been enclosed since March, 1873; that sixty-five acres are under cultivation; that said improvements were made in good faith, and that he purchased and improved the same without any knowledge of pl'ff's claim. He denies the allegation in pl'ff's bill, and asks that the answer of the C., B. & Q. be taken as his answer.

He alleges that Mills County, by its proper officers, placed upon the tax books of said county the land above described as the property of this def't; that he has paid to the treasurer of Mills County taxes for the years 1873 and 1874, and received from said treasurer receipts therefor, and that by these acts said county is estopped from claiming title to the same; and prays for a decree quieting the title in him.

(Duly verified.)

On December 23, 1875, Thomas Crewdson, by Hale & Stone, attorneys, filed answer in substance as follows (p. 246 of Transcript):

57 That on the 11th of December, 1865, the B. & M. R. R. Co. conveyed to him by warrantee deed the NE. SE. of 5, 71, 43; that he has paid taxes thereon for the years 1866 to 1873, inclusive, and thereby pl'ff is estopped from making any claim of title. That in February, 1874, he conveyed by warrantee deed the said land to B. Gunsolly. That he, his grantor, and grantee have occupied the land for 20 years. He asks that the answer of the C., B. & Q. R. R. Co. be taken as his answer, and the prayer thereof his prayer.

(Duly verified.)

On December 23, 1875, def't Daniel Cavenaugh, by Hale & Stone, attorneys, filed answer substantially as follows (p. 251 of Transcript):

That he purchased of the B. & M. R. R. Co. the NW. NW. of 13, 73, 42, and has occupied said land since June, 1871. That the whole tract is enclosed, and one-half in cultivation; that he purchased and improved the same without any knowledge of the pl'ff's claim; and he denies the allegations of pl'ff's bill, and alleges that he paid the taxes thereon in the name of his grantor for the year 1871, and for the years 1872, 1873, and 1874 in his own name, and received receipts in due form, except for the year 1874, upon which receipt the treasurer wrote the words, "Received under protest," and that thereby pl'ff is estopped. He prays that the answer of the C., B. & Q. R. R. Co. herein may be taken as his answer, and the prayer thereof his prayer.

(Duly verified.)

On the 1st of January, 1876, pl'ff filed the following reply to the answer of the C., B. & Q. R. R. Co. (p. 262 of Transcript):

1st. Pl'ff denies the averments in the 2d par.

2d. Pl'ff has not knowledge or information sufficient to form a belief as to any of the matters averred in the 3d and 4th paragraphs of said answer.

3d. Pl'ff denies the averments in the 5th par. of said answer.

58 4th. Pl'ff admits the averments in the 6th and 7th paragraphs of said answer.

5th. Pl'ff admits the averments in the 8th par., except as to the number of acres sold, and as to the actual number pl'ff has not sufficient knowledge thereof to form a belief.

6th. Pl'ff denies the averments in the 9th par., except this, that the pl'ff admits the appointment by its board of supervisors of Wm. Hale, E. C. Bosbyshell, L. W. Tubbs, D. H. Solomon, and S. Christy as a committee to confer and treat with the B. & M. R. R. Co., with a view of settling the points in controversy.

7th. Pl'ff denies the averments in the 10th to the 14th paragraph, inclusive, in said answer, except the following: Pl'ff admits that on or about July 13, 1868, the said committee submitted to the B. & M. R. R. Co. the proposition set out in Exhibit C to said answer (see Exhibit X, p. 21 this Abstract), and that on or about October 27, 1868, said railroad company accepted said proposition, and that about the of November the pl'ff, by its board of supervisors, approved of said proposition as set forth in the resolution embodied in Exhibit D to said answer; and pl'ff denies that said proposition so made and accepted was of any force in that form and condition, because the question involved therein had not been submitted to an election of the people of the county, and was not authorized by a majority vote as required by law; and, further, because said proposition is based upon two considerations, one of which is illegal, and therefore the same was and is null and void.

8th. Pl'ff admits the appointment of Wm. Hale and H. C. Watkins as special agents for Mills County to adjust all land claims according to the terms of said proposition, and pl'ff denies every other matter contained in the 15th par. of said answer.

9th. Pl'ff has not sufficient information to form a belief as to the averments in the 16th par., but pl'ff says that if said Copeland was so

59 appointed such appointment was without her consent, and that at and long after the time of his supposed appointment he was clerk of the board of supervisors, and so sustained confidential relations to pl'ff that rendered his appointment and acts upon said committee fraudulent.

10th. As to the averments in the 17th and 18th paragraphs, pl'ff has not sufficient knowledge or information to form a belief.

11th. Pl'ff denies the averments contained in the 19th par.; denies that the alleged deeds are her acts; denies that the persons signing said deeds did so under any authority, or in pursuance of any warrant of law, and denies that said deeds passed title to any of the lands in controversy.

12th. Pl'ff denies that she conveyed any of the lands in controversy to the B. & M. R. R. Co.; denies that she assessed and levied taxes on said lands, as owned by said railroad company, for the years 1870 to 1874, inclusive. Plaintiff avers that if any of said lands appear on the tax books as owned by said railroad company, then that the same was unauthorized and is not the act of this pl'ff; and further, that if any tax receipts have been issued to said railroad company, then that the same were unauthorized. Pl'ff denies that it has ever, in any manner, recognized said railroad company as the owner of said lands. Pl'ff further avers that the lands in controversy were of the class of lands granted to the State of Iowa, under act of Congress approved Sept. 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits." That at the times indicated in the 20th par. of said answer said lands were trust property, and so owned and held by this pl'ff under said act of Congress and of the general assembly of the State of Iowa, approved Jan. 13, 1853, entitled "An act to dispose of the swamp and overflowed lands in the State of Iowa, and to pay the expenses of selecting and surveying the same," and of other acts of said general assembly supplimental thereto; and of the certain other act of Congress, approved March 3d, 1857, entitled "An act to confirm to the several States the swamp and overflowed lands selected under the act of Sept.

60 28th, 1850, and of the act of the 2d of March, 1849"; and further, that said lands were not then, by reason of said proposition, of which Exhibit C to said answer is a copy (see p. 21, this Abstract), or by reason of the alleged deeds, of which Exhibits C, D, E, F, and G to the petition herein are copies, subject to taxation; and further, pl'ff avers that it has always, from the time said lands were granted under said act of the general assembly, approved Jan. 13, 1853, in trust as therein provided, asserted title thereto adversely to all other persons, and especially to the pretended claim of said B. & M. R. R. Co. Pl'ff further avers that if any of said lands appear on the tax books as owned by said B. & M. R. R. Co., then that the same appear thereon by mistake, or by the procurement of said railroad company. Wherefore and because of the matters aforesaid, pl'ff says that she is not estopped from pursuing said lands as trust property, by setting up and claiming title thereto as against said railroad company; and further, pl'ff denies every other matter and thing in said 20th par. contained, not herein otherwise answered.

13th. Pl'ff says that all of the averments contained in the 23d par. which are in any manner inconsistent with or contradictory to the averments of the petition herein, are wholly untrue; and, further, pl'ff avers that the property which was the subject of the alleged compromise and

settlement, was trust property, and before a court of chancery, and a decree had been made and rendered prior to the date of such compromise and settlement, and that said compromise and settlement was so made without the consent of said court, and so pl'ff says that the said alleged compromise and settlement and all acts done and performed in pursuance thereof were and are nugatory and void.

14th. Pl'ff avers that said B. & M. R. R. Co. never had any title in the lands referred to in the 24th par. of said answer; and further, that the grantees of the deeds referred to in said paragraph had notice that their said grantor had no title in said lands at and before taking said conveyance. Pl'ff denies that said lands became taxable, or ever were in fact taxed by reason of the matters alleged in said paragraph; and
61 denies any other matter and thing in said paragraph inconsistent with the averments of the petition herein and not herein otherwise answered.

15th. Pl'ff denies that the instruments referred to in the 25th par. of said answer and annexed thereto as Exhibit G, is a deed in fact or in law, and denies that the parties thereto ever treated it as a deed, and aver that long prior to the date of said instrument the parties thereto, and especially said C., B. & Q. R. R. Co., had notice that said B. & M. R. R. Co. had no valid claim to the lands in controversy, and that the deeds upon which said last named company founded its claim of title are not the deeds of Mills County, and that the persons signing said deeds had no authority in fact or in law so to do, and that said deeds were procured by said B. & M. R. R. Co. without any warrant or authority of law, and that the lands in said pretended deeds described were trust lands; and that the conveyances attempted by said deeds were in violation of law and in fraud of said trust; and pl'ff denies any other matter and thing in said paragraph contained not herein above answered.

16th. Pl'ff avers that the act of Congress referred to in paragraphs 26th and 27th of said answer contemplated that the route of said road should be definately fixed by said railroad company before the grant could pass and vest title in the State in aid of such railroad, and further, that said act inhibited the location of the lands so given in aid of the road in one place and the location of the route and the construction of the road in another place, and that as a matter of fact said B. & M. R. R. Co., in compliance with said act of Congress, and of the requirements of the Land Department of the United States, by map and certificate, dated March 24th, 1857, and filed in the office of the secretary of state of the State of Iowa, March 28, 1857, definately fixed the routes of said road through Mills County via Glenwood, and so pl'ff says that said B. & M. R. R. Co. became and was obliged to adhere to said route and to construct its road thereon, and as to all other matters and things contained in said 26th and 27th paragraphs pl'ff says the same are wholly untrue

62 17th. Pl'ff avers that the allegations in the 28th par. of said answer relating to the certification of lands by the Commissioner of the General Land Office to said B. & M. R. R. Co. ought not to be regarded by the court in this action, for the reason that by the decree to the action herein referred to said certificate was declared a nu'lity and was already set aside, which said decree has never been abated, reversed, or set aside, wherefore pl'ff says that said allegations and said certificate are res

adjudicata, and this court cannot now entertain the same, and as to all other averments in said par. contained which are in any manner inconsistent with or contradictory of the petition herein pl'ff says that the same are wholly untrue.

18th. Pl'ff for reply to all the matters contained in the 29th par. of said answer, which are not embraced in the motion to strike, this day filed, and which are in any manner inconsistent with or contradictory of the averments of the petition herein, says that the same are wholly untrue.

19th. Pl'ff for reply to all other matters and things set forth in said answer which are not embraced in the motion this day filed, and which are inconsistent with or contradictory of the petition herein, says that the same are wholly untrue, and pl'ff here reaffirms all the matters and things averred in said petition, and prays judgment and decree as therein prayed for.

(Duly verified.)

On the 1st of January, 1876, pl'ff filed the following reply to the answer of the B. & M. R. R. (p. 277 of Transcript):

That as to the matters averred in said answer it has not knowledge or information sufficient to form a belief, and therefore neither admit' or denies the same; and pl'ff here reaffirms all the allegations of her petition, and prays judgment and decree as therein prayed for.

(Duly verified.)

On the 7th of February, 1876, def't C., B. & Q. R. R. Co., by Hale, Stone & Proudfit, attorneys, filed amendment to answer, and states (p. 336 of Transcript):

63 That it is the owner of the land described in Exhibit M to the deposition of C. W. Spalding filed herein January 5, 1876, by further claim, to wit, tax deeds made by the treasurer of Mills County, certified copies of which are hereto attached and made part of this answer, which deeds are held in trust for this def't, and def't claims title by virtue of said deeds, and that pl'ff is estopped thereby from claiming said lands, and def'ts pray decree quieting title in itself to said lands and for costs.

DEED NO. 1.

Tax deed by W. H. Taft, treasurer, to J. N. Dennison, dated April 20th, 1869, conveying NE. NW. 1, 72, 44; NW. NW. and SW. NW. 29, 72, 43, on sale made October 3, 1864, for taxes of 1859 to 1863, inclusive.

DEED NO. 2.

W. H. Taft, treasurer, to J. N. Dennison, dated April 14th, 1869, conveying SE. NW. and W. ½ SE. 1, 71, 43; NE. NE. 1, 73, 42; NE. SW. 7, 72, 40; SW. SW. 5, 72, 40; NW. SW. 33, 71, 41; SW. NE. 33, 72, 43; W. ½ NW. 5, and S. ½ SW. and SW. SE. 17, 71, 43, on sale made October 1st, 1864, for taxes of 1860 to 1863, inclusive.

DEED NO. 3.

W. H. Taft, treasurer, to J. N. Dennison, dated April 20th, 1869, con-

veying E. ½ NW. 5, and NW. SW. 17, 71, 43; NW. SE. 1, and SE. SE. 1, 72, 44, on sale made October 3d, 1864, for taxes of 1858 to 1863, inclusive.

DEED NO. 4.

W. H. Taft, treasurer, to J. N. Dennison, dated April 20th, 1869, conveying NE. SW. 31, 73, 40; SE. SE. 19, 73, 43; NE. NW., SE. SW., NW. SW., W. ½ SE. 15, 71, 41; N. ½ NW. 33, 72, 43; SW. NE. 13, 72, 44, on sale made October 3d, 1864, for taxes of 1859 to 1863, inclusive.

64 DEED NO. 5.

W. H. Taft, treasurer, to J. N. Dennison, dated Oct. 20th, 1869, conveying SE. NE., E. ½ SE. 29, NW. NE., SW. NW. 33, NW. NE. 27, 72, 43, on sale made October 3d, 1864, for taxes of 1858 to 1863, inclusive.

And on the 7th of February, 1876, def't H. B. Jones, by Hale & Stone, attorneys, filed answer in substance as follows (Transcript, p. 367):

That he is the owner of SW. NE. 9, 71, 41; that the taxes have been paid upon said land for the years 1867 to 1874 inclusive, and receipts given by the treasurer; that neither the B. & M. R. R. Co. or the C., B. & Q. R. R. Co. claims any portion of said land; that the B. & M. R. R. Co. conveyed the lands to Mills County, Oct. 13th, 1869, in pursuance of settlement; that he holds title from Mills County for said land and has been recognized by said county as the owner of said lands, and prays for judgment and decree, with costs.

(Duly verified.)

On Feb. 8th, 1876, def't Peter Eckley, by Hale & Stone, attorneys, filed answer in substance as follows (p. 378 of Transcript):

That he is the owner of the SE. ¼ of 4 and the W. ½ NE. 9, 73, 40 by purchase from the B. & M. R. R. Co. without knowledge of pl'ff's claim, and that he has made valuable improvements thereon; that pl'ff has collected taxes thereon from said def't and his grantors, and is thereby estopped, and prays for a decree quieting title in def't and for costs.

And on the same day def't W. H. Eckley, by Hale, Stone & Proudfit attorneys, filed answer substantially as follows (Transcript, p. 383):

That he is the owner by purchase from the def't, the B. & M. R. R. Co., of the E. ½ NE. 4, 73, 40; that said purchase was made without knowledge of pl'ff's claim; that he has made valuable improvements thereon; that he has paid taxes for the years 1872, 1873, and
65 1874, and that pl'ff is thereby estopped. He denies the allegations in the petition not admitted in the foregoing, and asks for a decree quieting title in him and for costs.

And on the same day def't George S. Wilson, by Hale & Stone, attorneys, filed answer substantially as follows (Transcript, 387):

That he is the owner of the in controversy, and that the greater

portion of the same is under cultivation; that he has paid the taxes for 1871, 1872, and 1873. He denies the allegations of pl'ff's petition inconsistent with this answer, and asks that the answer of the C., B. & Q. R. R. Co. may be taken as his further defence.

On the 7th of February, 1876, default was entered against the following parties, defendant, for want of answer (Transcript, p. 393): Thomas Conner, W. L. Roll, J. O. Munsen, S. D. Davies, Wm. Elias, and John Antrim, H. W. Summers, E. Barnes, S. T. Brothers, Frank Hobbs, C. H. Darling, J. S. Wright, J. Buckingham, E. Sheeks, J. Van Eaton, E. Delashmut, Wm. E. Dean, J. Smith, John Haney, George Morrow, H. Fisher, F. M. Thomas, David Henderson, Samuel Purcell, J. S. Runkles, J. T. Hamilton, J. F. Henderson, and Samuel Masters.

And on Feb. 10 (Transcript, p. 395) against the following parties defendant: T. A. Wright, D. H. Epperson, and F. M. Buffington.

On the 15th of February, 1876, def't Otis E. Allis, by Kelly Bros., attorneys, filed answer, substantially as follows (Transcript, p. 396):

That he is the owner, by purchase from def't B. & M. R. R. Co., and without knowledge of pl'ff's claim, of the NW. ¼ 17, 73, 43, and that he has made valuable improvements upon the same; that taxes have been paid upon said land for the years 1871 to 1874, inclusive, and that pl'ff is thereby estopped. He denies the allegations of pl'ff's petition not admitted in the foregoing, and prays a decree quieting title in him.

(Duly verified.)

66 On the 9th of February, 1876, Abraham Sherman, def't, filed petition as intervenor (Transcript, p. 409), stating that on Oct. 2d, 1874, he purchased the W. ½ NW. ¼ 29, 72, 43, for $1,200, and has paid $144 thereon, and agreed to pay the balance in annual installments, commencing Oct. 2d, 1876, and running to Oct. 2d, 1884, and praying that he may be allowed to keep the land on just and equitable terms.

(Duly verified.)

On the 23d of Febru'ry, 1876, def't John A. Boswell filed his intervention (Transcript, p. 412), stating that he is the equitable owner of W. ½ SW. ¼ of 14, 73, 40, by virtue of a pre-emption certificate issued by Mills County, and by virtue of a contract of purchase of same land from B. & M. R. R. Co. for a consideration of $1,360, on which there is still due about $800; and praying that he may be allowed to keep and retain the land, and for general relief.

(Duly verified.)

And on the same day def't Josiah Wearin filed his intervention (Transcript, p. 447), stating that he is the owner by contract from B. & M. R. R. Co., dated Dec. 16, 1874, of N. ½ SE. ¼ and SW. SE. 26, 72, 41, in consideration of $1,344, of which all but $492 has been paid; and praying that he may be allowed to keep and retain the land, and for general relief.

(Duly verified.)

And on same day said Wearin filed his other petition as intervenor (Trans-

cript, p. 421), stating that he is the equitable owner of the NE. ¼ 26, 72, 41, by virtue of a pre-emption certificate issued by Mills County, and by contract from the B. & M. R. R. Co., dated May 5, 1874, for a consideration of $2,048, of which he has paid all but about $750; and further stating that he has had possession of said lands for many years, and has improved the same, and that the B. & M. Co. induced him to make said contract by fraudulent representations; and praying that he may be allowed to keep the land upon just and equitable terms, and for general relief.

(Duly verified.)

67 On the 23d of February, 1876, def't Lewis Robbins filed his intervention (Transcript, p. 425), stating that he is owner by purchase from B. & M. R. R. Co., dated April 1, 1874, the SW. NE. 31, 73, 40, for a consideration of $440, upon which he has paid $52.80, and is to pay the balance in annual installments upon April 1st, 1876, to 1884, inclusive, and prays to have his rights protected, that he may keep the land, and for general relief.

On the 16th of February, 1876, def't Bernard Glenn filed his intervention (Transcript, p. 432), stating that he is the owner, by contract from B. & M. R. R. Co., dated 22d June, 1874, of the W. ½ NE. 1, 72, 44, for a consideration of $497.28, of which he has paid $59.68, and has agreed to pay the balance in annual installments, commencing June 1st, 1876, and ending June 1st, 1884, and praying that he may be allowed to keep the land, and for general relief.

(Duly verified.)

On the 23d February, 1876, def't Andreas Kretz filed his intervention (Transcript, p. 435), stating that he is the owner, by contract from the B. & M. R. R. Co., dated Dec. 6th, 1873, of the SE. SW. 26, 72, 43, for a consideration of $680, upon which he has paid $40.80, and agreed to pay the balance in annual installments, commencing Dec. 6th, 1874, and running to Dec. 6th, 1883, and he prays that his rights may be protected, and for general relief.

On the 17th of February, 1876, pl'ff, by Solomon, Lawrence and Ross, filed reply to paragraphs 21 and 22 of separate answer of C., B. & Q. R. R. Co., and says (Transcript, p. 437):

Pl'ff denies all the averment contained in said paragraphs; denies that the alleged assessments, levies, sale, and redemptions were or are its acts, denies that the persons making such assessments, levies, and sales, and signing said certificates of redemption, did so by the authority or with its knowledge or approval, and denies that any of said acts were done under and in pursuance of any warrant or authority of law, and denies that by reason of any of said acts said def't acquired any right to or in-
68 terest in the subject of this controversy, and denies that it is estopped by reason of the matters contained in said paragraphs.

On the 21st of February, 1876, pl'ff filed the following reply to the answer of Brooks et al. (p. 451 of Transcript):

1st. Pl'ff admits that she is a citizen of Iowa, and as to all other mat-

ters in 1st par. contained pl'ff has not sufficient knowledge or information to form a belief.

2d. Pl'ff denies that the parties to said suit in the circuit court of the United States are the same as the parties to this action.

3d. Pl'ff avers said Griswold, with Forbes and Kidder, were made parties to the original petition herein, and as to them this action was commenced on the 29th of January, 1874, and long prior to the commencement of said suit in the circuit court of the United States. And pl'ff further avers that said Brooks, Hardy, and Griswold appeared in this action Feb. 16th, 1875, and filed their general demurrer to the petition, which demurrer was afterwards, on Feb. 26th, 1875, overruled by the court.

4th. Pl'ff further avers that whilst the parties, subject-matter, and object of this action, are as in the petition herein set forth, that the parties to said suit in the circuit court of the United States are said Brooks, Hardy, and Griswold, as sole pl'ffs, and Mills County, Iowa, as sole def't, and the subject matter of said suit is an alleged security claimed by said Brooks et al. in the lands in their bill mentioned under and by virtue of a mortgage given by the B. & M. R. R. Co., and the object of said suit is to quiet the title of said mortgagor in said lands, said mortgagor not being a party to, or asking any relief in, said suit.

Pl'ff denies every other matter and thing in said answer contained in any manner inconsistent with or contradictory of the matters contained in this reply, wherefore pl'ff asks judgment and decree as in its petition prayed.

69 On the 23d of February, 1876, pl'ff filed replies to the separate answers of Peter Eckley, Dennis Sheedy, Fred. Schoenig, Giles Hinson, Daniel Cavenaugh, L. Hinson, S. B. Sidner, O. E. Allis, W. H. Eckley, Thos. Crewdson, H. B. Jones, T. S. Goddard, J. V. Hinchman, Geo. S. Wilson (Transcript, p. 461), substantially as follows:

That as to the matters and things stated in said answers, pl'ff has not sufficient knowledge or information to enable her to form a belief.

Pl'ff denies that Mills County has collected taxes on said lands, as stated in said separate answers, and if said taxes were so collected that the same was done through mistake, and is not the act of Mills County, and that said county is not estopped thereby, and that the officers who collected the same had no authority to do any act which would forfeit the title of the county to its property.

(Replies duly verified.)

On the 25th of February, 1876, def't, C., B. & Q. R. R. Co., by Hale, Stone & Proudfit, attorneys, filed amendment to answer, as follows (Transcript, p. 480):

1st. Def'ts deny that it is indebted to pl'ff in the sum of $5,000, or any other sum.

2d. Def't says that the amounts of money sought to be recovered by pl'ff were received by def't in pursuance with the terms of the contract of settlement made between the said B. & M. R. R. Co. and pl'ff, a copy of which contract is attached to this answer (see p. 21, this Abstract, for copy of contract). That by the express terms of said contract the said B. & M.

R. R. Co. was entitled to receive balance due of $1.25 per acre from the parties holding land under pre-emptions included among the lands then in dispute between said company and pl'ff, and that said company under said contract received said sums, and made to the parties paying the same conveyances of the lands so pre-empted and held by settlers of said county, in pursuance with the terms of said contract, and in adjustment of
70 the matters growing out of said contract. Copies of said deeds hereto attached. That the money so received by the B. & M. R. R. Co. was not in trust, but by express terms of said contract the property of said company. Therefore def't prays judgment for costs.

Exhibits to foregoing answer.

DEED NO. 1.

Know all men by these presents that the B. & M. R. R. Co., for the consideration of one hundred dollars, to be paid by H. C. Watkins, of Mills County, in the State of Iowa, the receipt of which is hereby acknowledged, doth hereby grant, bargain, and sell unto the said H. C. Watkins the following described real estate, lying and being in the county of Mills, State of Iowa, to wit: The E. ½ of SW. ¼, sec. 1, T. 73, R. 42, situated in Mills County and State of Iowa, containing, according to the United States survey, eighty (80), more or less, acres, reserving, however, the right of way to the said railroad co. two hundred feet wide, where the track of the railroad has been or may be laid over said land, to have and to hold to the said grantee and his heirs and assigns forever, to their own use and behoof, and the said grantor doth hereby agree with the said grantee; and, furthermore, the said grantor doth covenant with the said grantee, his heirs and assigns, their peaceable possession of the said premises against all lawful claims, forever to warrant and defend against all persons whomsoever claiming under, by, or through us. In witness of which the said grantor hath hereto set its seal and caused these presents to be signed by its treasurer and countersigned by its land agent this 17th day of January, 1870.

J. N. DENNISON, *Treasurer.*

GEO. S. HARRIS, *Land Commissioner.*

(Duly acknowledged.)

Release.

Whereas the B. & M. R. R. Co. did, on the 1st of October, 1858, execute and deliver to John M. Forbes, Henry P. Kidder, of Boston, Massachusetts, and John N. A. Griswold, of the city and State of New York, a certain mortgage deed of that date, which deed is recorded in the recorder's office of Mills County and State of Iowa, wherein said company conveyed to said Forbes, Kidder, and Griswold, for the uses and purposes
71 therein mentioned, among other lands, the following described real estate lying and being in the county of Mills, in the State of Iowa, to wit, the E. ½ of SW. ¼, sec. 1, tp. 73, R. 42; and whereas the said company, with the assent and approval of said Forbes, Kidder, and Griswold, have sold and conveyed unto H. C. Watkins the real estate described above for the consideration of one hundred dollars to it in hand paid by said H.

C. Watkins, which sum of money has been paid to us by said company in our capacity as trustees of said mortgage deed for the uses and purposes therein mentioned: Now, know all men by these presents that we, the undersigned, a majority of the trustees in the aforesaid mortgage deed, in consideration of the aforesaid premises and payment of said sum of one hundred dollars to us by said company for the uses and purposes aforesaid, do hereby remise, release, and forever quitclaim unto the said H. C. Watkins the real estate described aforesaid, to be held by him free and exempt from all liens, encumbrances, or charges of said mortgage deed. In testimony whereof we have hereunto set our hands and seals this 24th day of January, A. D. 1870.

[L. S.] A. W. FORBES,
[L. S.] H. P. KIDDER,
Trustees.

In presence of—
F. G. WEBSTER.
A. W. ADAMS.

(Duly acknowledged).

DEED No. 2. Dated Sept. 23, 1872, substantially in same form as preceding, conveying to P. P. Johnson, of Montgomery County, for a consideration of $32.00, the NE. SW. and SE. NE., 7, 72, 40, eighty acres, signed by Dennison and Harris, and duly acknowledged, and having attached thereto a release, substantially the same as that annexed to deed No. 1, signed by J. W. Brooks and H. P. Kidder, trustees.

DEED No. 3. Dated Feb. 6, 1871, substantially in same form as No. 1, preceding, conveying to Josiah Wearin, for a consideration of $500.00, the SW. ¼ sec. 13, and N. ½ NE. ¼, and SW. NE. of sec. 23, all in T. 72 72, R. 41, 280 acres, signed by Dennison and Harris and duly acknowledged. Release of mortgage signed by Forbes and Kidder, trustees, and duly acknowledged.

DEED No. 4. Dated Jan. 17, 1870, substantially in same form as No. 1, conveying, for a consideration of $100.00, the E. ½ NE. ¼ sec. 33, 71, 41, eighty acres to H. W. Summers, signed by Dennison and Harris, and duly acknowledged. Release of mortgage, signed by Forbes and Kidder, trustees, and duly acknowledged.

DEED No. 5. Dated Jan. 17, 1870, substantially in same form as No. 1, conveying, for a consideration of $50.00, the SW. NE. sec. 24, T. 72, R. 41, to D. N. Smith, signed by Dennison and Harris, and duly acknowledged. Release of mortgage signed by Forbes and Kidder, trustees, and duly acknowledged.

DEED No. 6. Dated April 12, 1871, substantially in same form as No. 1, conveying, for a consideration of $97.90, the N. ½ NW. ¼ 7, 72, 40, to Andrew Wearin, signed by Dennison and Harris, and duly acknowledged. Release of mortgage signed by Forbes and Kidder, and duly acknowledged.

DEED No. 7. Substantially in same form as No. 1, dated April 12, 1871, conveying, for a consideration of $100.59, the W. ½ SW. ¼ 7, 72, 40, to Harry Wearin, signed by Dennison and Harris, and duly acknowledged. Release of mortgage signed by Forbes and Kidder, and duly acknowledged.

DEED No. 8. Substantially in same form as No. 1, dated January 17, 1870, conveying, for a consideration of $50.00, the NE. NW. 31, 73, 42, to D. C. Briggs, signed by Dennison and Harris, and duly acknowledged. Release of mortgage signed by Forbes and Kidder, and duly acknowledged.

73 And the issue being thus joined the cause came on for final hearing at the February term, 1876, of the district court of Mills County, Iowa, and the pl'ff, to sustain the issues on her part, offered the following evidence:

Plaintiff's evidence in chief.

I. WOOSTER FAY, being sworn, said:

In the summer of 1868 I resided in Keg Creek Tp., Pottawattamie County, Iowa; in that year surveying party No. 4, under Engineer Haven, surveyed a route through said Keg Creek Tp. under the direction of the B. & M. R. R. Co., from Red Oak to Council Bluffs; this party camped in my door yard four or five weeks; think the party left the work and went eastward in July; about the time of leaving Engineer Haven told me that we would not get the road—that it would be built through to Glenwood; when I told him the survey was a big expense to the company, he said it had cost $6,000, but that the company had made $100,000 out of Mills County; when I asked him how, he answered, "They have withdrawn the swamp-land suit, given us a free right of way and depot grounds at Glenwood—that is, citizens of Genwood would buy the right of way from the farmers;" the party left that day and never returned to the survey again; prior to this Haven told me of a conversation he with a Glenwood man, in which the latter asked him if he could build a road from Red Oak to Council Bluffs, to which Haven answered, "Yes, a quarter of a million cheaper than through Glenwood;" whilst the party were camped in my yard, Haven went with me a time or two to Council Bluffs, and charged me not to introduce him to citizens of Council Bluffs—said he did not want to be bored; party No. 4 consisted of six or eight persons and included Noah Hanks; this party left my place and camped near Council Bluffs, on Glenwood road, for a time, and then camped again in my yard; during this time the railroad company were not building any road west of Red Oak.

II. NOAH HANKS, being sworn, said:

I was a member of party No. 2 sent out by the B. & M. R. R. Co.;
74 Chief Engineer Teilson had immediate charge of No. 2; early in the season of 1868 No. 2 come to Glenwood from Red Oak; I had been with the party a month at that time; it was the understanding with our party before we left Red Oak that the road was to be built through Glenwood on the route that we were about to survey; we got this from the way Teilson talked; he said he wished to establish part of the line about Glenwood—that that would be the permanent line through Glenwood—making an intersection with the St. Joe road; he told us not to talk too much, that we were not to know anything about it; it was to be the final route, but we were not to tell it; this understanding and talk was at Red Oak; there were three parties there at the time, Nos. 1, 3, and 4;

we left Burlington in March or April, and were about a month in reaching Red Oak; my party, No. 2, came on to Glenwood, and went to work running routes down Keg Creek, through Glenwood; we run the route where the road now is; I stayed with No. 2 until this survey was made, and then, under Teilson's orders, went to Red Oak and joined No. 4, under Haven, and remained with No. 4 till August, working from Red Oak to Council Bluffs, running a trial line, and whilst running this trial line Teilson (chief engineer) was with our party every once in a while; Haven and Teilson had their private talks together at Indian Creek, Mosquito Creek, and twice at Council Bluffs.

Cross-examination:

Can't say exactly when survey through Glenwood (by party No. 2) was made; it might have been in June; we ran several trial lines through Glenwood—can't say that these were to influence or scare the people of Glenwood; it is common to run trial lines before final location; the engineers often talk together—they do this to keep the boys from talking too much; the line from Red Oak to Council Bluffs was a trial line.

Redirect:

After running the trial line from Red Oak to Council Bluffs, we run back and located about half of it; at first our work was done with great care, but towards the last Haven, the transit man, told us we need not be so particular, as the probability was the road would go through
75 Glenwood; this was towards the last of the survey, in August; we returned to Burlington, reaching there August 17th, 1868.

Recross:

We were in Anderson T'p from the 8th to the latter part of July, and during this time were visited by members of other surveying parties, not citizens of Glenwood.

III. E. C. BOSBYSHELL, being sworn, says:

I have lived in Mills Co. since 1856, engaged in merchandising; was county judge in 1857–'8; knew J. F. Joy; first met him on a steamboat on my way to St. Joe; think he was president of the B. & M. R. R. Co. at the time; he told me on this occasion that he did not know whether they were going to run the road through Mills Co. or not; that his company hated to run a road through the country where the people were fighting them; that it was hard to run a road through when the people were fighting all the time. I told him I did not know that we were fighting; then he said this suit, referring to the suit then pending of Mills County vs. The B. & M. R. R. Co.; that the people ought to go to work and settle it, or have it settled; that in these times nobody was independent of railroads; that he did not want to run a road through a county where the people were fighting him; that he did not know, could not tell, where the road would be built; don't think he said that the road would probably have two ends; prior to this the company had run a line from Red Oak to Nebraska City, and I think I suggested to Joy that if they built on that line they would not run to Glenwood also; that was my idea of the battle, but I don't think he said anything about that; this conver-

satiou was some time before the company commenced work in Mills County; when I came home I related this conversation with Joy to quite a number of my friends here; I was one of the committee sent to Burlington in July, 1868, with the celebrated proposition; when we started it was a question of great doubt whether or not we would get the road through Mills County; there was some excitement, and everybody was interested, more or less, to have the road. Mr. Perkins said to the committee
76 at Burlington that the company would require the right of way through the county if they ever ran a road there, and that he did not know that we could get it then; he wanted the county or private individuals to guarantee a free right of way. Mr. Perkins also said something about the remission of taxes for two years; said he could not guarantee what the company would do; that he would submit our proposition to the directors, and would let us know what was done. After our committee came back from Burlington a bond, signed by two hundred citizens of Mills County, guaranteeing right of way, was forwarded to the company and declined because of its numerous signers; then another one, signed by a few of us, was gotten up; under this arrangement we went around and got some of the right of way released, and the residue was afterwards condemned and paid for, partly by taxation and partly by private subscription; our committee to go to Burlington was appointed June 2d, but we did not start until July 11th.

Cross-examination:

The proposition submitted by the committee was prepared at Burlington in the Barrett House; it was after we had submitted the written proposition that Perkins brought up the questions of right of way and taxes; our authority did not go beyond the written proposition; I could not say that before our appointment there was no talk among the citizens or fears expressed that influenced or affected the proposition; I think the citizens here were anxious to have a railroad, and at that time did not know where it would go; I think the railroad company did nothing to bring about the proposition; the object was to quiet the titles and get the railroad too; that was my idea.

Redirect:

I did not mean to say in my cross-examination that there was no feeling or solicitude in regard to where the road would go, and that that was no part of the feeling which caused us to make the proposition; there was really a great desire prevailing in the minds of all parties interested in that proposition to secure the road; we were all anxious to have it; the board of supervisors probably authorized the proposition for the purpose
77 in part of securing the road; the written proposition was just what it says it is.

IV. Resolution (Transcript, pp. 628 and 866) of board of supervisors at June session, 1868:

"On motion of Mr. Wing, Wm. Hale, E. C. Bosbyshell, L. W. Tubbs, D. H. Solomon, and S. Christy were appointed a committee to confer and treat with the B. & M. R. R. Co., with a view to settling the points in controversy between the said company and the county."

VI. Minute book (Transcript, pp. 628, 850, and 864) of the board of supervisors, showing the report of committee appointed by the resolution

aforesaid, containing the proposition submitted to the B. & M. R. R. Co. and the action of the board on said contract. (See Abstract, pp. 21 and 23, for copy of same.)

VII. Minute book of the board of supervisors of Mills County (Transcript, pp. 628, 870, and 872), showing proceedings of board at the adjourned session held June 19th, 1871, ordering a submission of the proposition for a contract to a vote of the people at October election in that year, viz:

"The special business which called the board together at this time was then taken up, to wit, the matter of submitting to the qualified electors of Mills County the question of approval of an agreement made between the board of supervisors of Mills County and The B. & M. R. R. Co., in the settlement of the swamp-land difficulties, and, after due consideration, the following resolution was passed by the board, viz:

"Resolved, That the question be submitted to the electors of Mills County at the next general election whether the said electors will or will not approve of the agreement entered into between The County of Mills and The B. & M. R. R. Co., dated 10th of November, 1868, to settle the swamp-land suit between the county and said company then pending in the Supreme Court of the United States.

"On motion, it was ordered that the auditor be, and is hereby, instructed to cause the agreement between the county and railroad company referred to in the resolution this day passed to be published in full in the county papers in connection with the notice of the submission of the question contained in said resolution."

78 VIII. J. M. POWELL, being sworn, says:

I am county auditor. The record here produced is the election record, and the same shows the recording of the votes taken on the contract between Mills County and The B. & M. R. R. Co. This record, with other things, shows the following (Transcript, pp. 865–'6 and 891–'6):

"BOARD SUPERVISORS, OCT. TERM, 1871,
"*Monday Morning, Oct.* 16, 1871.

"Board met pursuant to adjournment. Present, Chairman Buffington, Supervisors Creech and Whitfield. The auditor then presented the poll-books of the several townships, and the board proceeded to open the same and canvass the votes of Mills County cast at the general election held on the 10th day of October, 1871, the result of which canvass is as follows," so far as the same relates to the submission of said contract to a vote: * * *

"For and against ratification of the contract with the B. & M. R. R. Co. there were 1,383 votes cast. * * * For ratifying the contract with the B. & M. R. R. Co. 1,031 votes cast, and against ratifying 357. * * * We, the undersigned, members of the board of supervisors and ex officio board of county canvassers for said county, do hereby certify that the foregoing is a correct abstract of the votes cast at the aforesaid election, according to the poll-books returned from the several townships in said county. We further certify that at said election the following persons were duly elected to the office stated opposite their respective names:

"A. R. Wright, representative." * * *

And at the end of the list there was added the following:

"Against ratifying the contract with the B. & M. R. R. Co."

"In testimony whereof we have hereunto set our hands and caused this to be attested by the clerk, and sealed by the seal of the board of supervisors of said county, this 17th day of October, 1871.

[L. S.]

"B. F. BUFFINGTON,
"BENNETT CREECH,
"D. M. WHITFIELD,
"*Members of Board of Canvassers.*

"D. M. WHITFIELD, *Auditor.*"

VIII. D. M. MITCHELL, being sworn, said:

I was county auditor in 1871. (Witness was here shown the election book and abstract of election held Oct. 10th, 1871, and is asked if he affixed his signature thereto.) That is my signature. I made the
79 entries. I feel satisfied, from a clear recollection of the fact that there is an error in one statement, viz, "For ratifying the contract of B. & M. R. R. Co. 1,031 votes cast; against ratifying, 357." The words "for" and "against" should be changed so as to make it read, "Against ratifying the contract of B. & M. R. R. Co., 1,031 votes cast; for ratifying, 357." The statement at the end of the abstract, just before the signatures, "Against ratifying the contract with the B. & M. R. R. Co.," correctly states the result of the vote on the contract.

Cross-examination:

I have made my answers in chief from my best recollection of the facts; it is possible that I may be mistaken, but I have no doubt of the truth of my answers; I fully believe them.

IX. D. M. WHITFIELD, being sworn, said:

I was a member of the board of supervisors in October, 1871, and signed the abstract of election held in that month; I recognize my signature; the abstract does not correctly state the vote; there were in fact 1,031 votes cast against ratifying, and 357 for ratifying; the recital just over our signatures recites the fact as to result; it was against ratifying.

Cross-examination:

The auditor reads out the proceedings and abstracts, but did not read it as it is written, else I should have discovered it.

X. JOSIAH WEARIN, being sworn, said:

The papers shown me are receipts given me for purchase-money of lands therein described. I know that Mr. King, the person signing, was agent of the railroad company. The lands are pre-empted swamp lands. The receipts are as follows (Transcript, p. 645):

GLENWOOD, IOWA, *April* 19, 1871.

Received of Josiah Wearin the sum of $50, which is paid me as agent of the B. & M. R. R. Co., the same being the amount of the purchase-money due said company on the NW. SW. 29, 73, 40, in Mills County, Iowa; this being in accordance with the contract between Mills County and said railroad company in settling the swamp-land complications.

(Signed) J. M. KING,
Agent B. & M. R. R. Co.

80 The other receipt is in same form, is dated May 11, 1871, and describes SW. NW. 29, 73, 40.

XI. J. W. POWELL, recalled:

I have on file in my office, as part of the records thereof, receipts signed by persons purporting to be agents of the B. & M. R. R. R. Co. for moneys paid to the company by different persons upon the lands described in each receipt. (Here fifteen separate receipts were produced and read in evidence, covering $1,675 in money.) (See Abstract, p. 26, for the substance of said receipts.)

XII. The pl'ff next offered, and by consent of def'ts the same were regarded as in evidence, the following acts of Congress and of the general assembly of the State of Iowa: (Transcript, pp. 649 to 653): An act of Congress approved Sept. 28, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits;" also chapter 60 of the laws of the third general assembly of Iowa, which took effect Feb. 26th, 1851, entitled "An act in relation to the swamp lands within the State of Iowa;" also chapter 13, laws fourth general assembly, which took effect Feb. 2d, 1853, entitled "An act to dispose of the swamp and overflowed lands within the State, and to pay the expenses of selecting and surveying the same;" also chapter 65 of same assembly, which took effect July 1st, 1858, entitled "An act supplemental to an act entitled 'An act to dispose of the swamp and overflowed lands within the State, and to pay the expenses of selecting and surveying the same;'" also an act of the fifth general assembly, which took effect July 1st, 1855, being chapter 138, and entitled "An act providing for the collection of moneys due the State of Iowa from the disposition of swamp lands, and for selecting the swamp lands and securing the titles to the same;" also chapter 110, fifth general assembly, which took effect Feb. 21st, 1855, entitled "An act to amend an act entitled 'An act to dispose of the swamp and overflowed lands within this State,'" approved Jan. 13th, 1853; also chapter 36, fifth general assembly, extra session, passed July 15th, 1856, entitled "An act to amend an act entitled 'An act to dispose
81 of the swamp and overflowed lands within this State, and to pay the expenses of selecting and surveying the same;'" also chap' 156, fifth general assembly, which took effect Jan. 13th, 1855, entitled a "A bill to prevent trespass and waste on swamp and other lands in the State of Iowa, and for other purpose;" also chapter 115, sixth general assembly, which took effect July 1st, 1857, entitled "An act in relation to the swamp lands of this State;" also chapter 100, seventh general assembly, which took effect April 7th, 1858, entitled "An act for the relief of swamp lands pre-emptors;" also chapter 3, seventh general assembly, which took effect Feb. 11th, 1858, entitled "An act making an appropriation for swamp land purposes;" also chapter 132, seventh general assembly, passed March 22d, 1858, entitled "An act to authorize counties to use the swamp lands to aid in the construction of railroads and seminaries;" also chapter 77, ninth general assembly, passed March 31st, 1862, entitled "An act to amend sec. 986 of the revision of 1860 in relation to the swamp lands;" and in connection with that we offer and refer to sections 986, 987, 988, 989, and 990 as the portions referred to in session laws of 1862; also an act of Congress, approved March 3d, 1857, entitled "An act to confirm to

the several States the swamp and overflowed lands selected under acts of Sept. 28, 1850, with the act of the 2d of March, 1849;" the act of Congress approved May 15, 1856, entitled "An act making a grant of the lands of the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State;" and also act of the general assembly, passed July 14th, 1856, entitled "An act to accept the grant and carry into execution the trust conferred upon the State of Iowa by the act of May 15th, 1856, entitled 'An act making a grant of lands in the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State.'"

XIII. Pl'ff next read in evidence the articles of incorporation of the B. & M. R. R. Co., viz: Original articles, dated January 15th, 1852, for the construction of a railroad from Burlington to the Missouri River, and filed in office of secretary of state, January 23d, 1852. Also amendments to original articles, made November 25th, 1853, and filed in office
82 of secretary of state November 27th, 1853; also amendments to original articles, made April 28th, 1864, and filed in office of secretary of state May 16th, 1865; also amendment to original articles, made December 18th, 1867, and the further amendments made June 23d, 1869, and filed in office of secretary of state September 25th, 1869 (Transcript, pp. 752–773).

Article 10 of the original articles reads as follows:

"The object of this incorporation is to construct and use a railroad extending from Burlington to the most eligible point on the Missouri River, and along the most eligible route." (Transcript, pp. 653 and 755.)

And among the amendments last above referred to is the following:

"Moved by C. E. Perkins that article ten (10) of the articles of incorporation be, and it is hereby, amended by inserting after the word 'point' the words 'or points,' so as to read, 'to the most eligible point or points on the Missouri River.'"

The motion of Mr. Perkins was adopted by a unanimous vote, and declared carried by the chair. (Transcript, pp. 653 and 772.)

XIV. Pl'ff next read in evidence the written acceptance by the B. & M. R. R. Co. of the grant of general assembly of the State of Iowa, approved July 14th, 1856. (Transcript, pp. 653 and 774–'6.)

OFFICE B. & M. R. R. Co.,
Burlington, Iowa, Sept. 3, 1856.

At a regular meeting of the board of directors of said company held this day the following resolution was unanimously adopted:

Resolved, That the act of the general assembly of the State of Iowa, approved July 14th, 1856, entitled "An act to accept the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of railroads in said State,

approved May 15th, 1856, be, and the same is hereby, accepted by this company, and all provisions of the same are hereby assented to.

W. F. COOLBAUGH,
President.

Attest:
OLIVER COCK, *Secretary.*

With the seal of the company hereto affixed Sept. 3d, 1856.
Filed Sept 6th, 1856.

G. W. McCLEARY,
Secretary of State.

83 XV. Pl'ff next read in evidence the certificate and map of location of the B. & M. R. R. Co., under date March 24th, 1857, filed in office of secretary of state March 27th, 1857. (Transcript, pp. 654 and 778.)

OFFICE OF THE B. & M. R. R. Co.,
Burlington, Iowa, March 24th, 1857.

It is hereby certified that in pursuance of the act of legislative assembly of the State of Iowa approved July 14th, 1856, entitled "An act to accept of and carry into effect the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State,' approved May 15th, 1856." This map shows the location and route of the B. & M. R. R. from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of Platte River, in the State of Iowa, as definitely fixed in compliance with the said act of the legislative assembly of the State of Iowa and the said act of Congress and in pursuance of the orders of directors of the B. & M. R. R. Co.; that said map truly represents the precise times when said sections or part of the determinative line of said road was fixed on the face of the earth by the usual and proper marking of the same, and by the execution of the field work thereof; that so much of said work as was executed prior to the 15th day of May, 1856, is included between the points designated on said map by station flags marked No. 1 and No. 2, and that the remainder was marked and executed on the respective days indicated along the line between the points designated by flags from No. 2 to No. 62, inclusive; that the several dates and points so marked were taken from the engineers' original field-notes of survey and location of said line, and that the marking of the line and field work above referred to was executed by and under the direction of the chief engineer of said railroad, in accordance with the orders of the board of directors of said company.

In testimony whereof the said B. & M. R. R. Co. has hereunto attached its corporate seal, and caused the same to be signed by the president and chief engineer, at Burlington, this 24th day of March, 1857.

W. F. COOLBAUGH,
President B. & M. R. R.
H. S. THIELSON,
Chief Engineer B. & M. R. R.

Attest:
OLIVER COCK, *Sec'y B. & M. R. R.*

Filed in the office of the secretary of state March 27th, 1857.
ELIJAH SELLS,
Secretary of State.

84 Map and certificate duly authenticated by certificate of Josiah T. Young, secretary of state.

XVI. At this point in the trial the following agreement was made by the parties in open court and entered of record, viz: "It is agreed that the lands in controversy were selected as swamp lands in the list returned to the General Land Office in 1854, and which was filed in that office prior to the passage of the act of Congress approved March 3d, 1857, with a few exceptional tracts. It is admitted that the B. & M. R. R. Co. received acres of land, which are described as clear-list lands, in pursuance of an act of Congress approved May 15, 1856, and an act of the State legislature in pursuance of that act of Congress, and the parties' understanding of the clear list for the purposes of this admission is that it embraces lands not now or heretofore in controversy.

XVII. Pl'ff next read in evidence the original and amended petitions, the original and amended answers thereto, and the decree in the case of Mills County, Iowa, vs. B. & M. R. R. Co., commenced Dec. 1st, 1863, in the district court of Iowa for Mills County.

Original petition in former action.

In the district court of Mills County, Iowa, of the term of February, 1864.

MILLS COUNTY
vs.
BURLINGTON AND MISSOURI RIVER R. R. CO. } Petition in equity.

To the district court of Mills County, Iowa, in chancery, sitting:

Your complainant, the County of Mills, in the State of Iowa, respectively represents to this court that she is the owner of and possesses the legal title to the various tracts of land hereinafter described and attached to this bill and made a part hereof, situated in Mills County, Iowa, by virtue of an act of the Congress of the United States of America approved September 28th, 1850, granting the same to the State of Iowa, and by virtue of the act of the legislature of the State of Iowa approved January 13th, 1853, and the acts supplementary thereto; that the said lands referred to were duly selected under the acts of Congress and the legislature of the State of Iowa, above referred to, by the
85 proper authorities, as swamp and overflowed lands, and the selection so made and returned as required by law was confirmed by the subsequent act of Congress approved March 3d, 1857.

2d. Complainant further showeth that said respondent, The B. & M. R. R. Co., pretends to claim and own the said lands hereinafter described, by virtue of an act of the Congress of the United States of America approved May 15th, 1856, and also certain acts of the legislature of the State of Iowa. Complainant further states that she has

made divers contracts of sale to individuals for a portion of the land referred to, but that she has not conveyed the same, and still holds the legal title thereto vested in her by the acts referred to; further, that respondent sets up title thereto as aforesaid, threatens suits, and offers the same for sale, and, in fact, has made contracts for the sale of a portion of the same, thus casting a cloud over the title of complainant, and raising doubts as to the capacity to convey.

Your complainant therefore prays this court, on the final hearing of this cause, that a decree be entered up decreeing fully and completely the title to the lands hereinafter described to be in complainants, and for such other and further relief as equity and good conscience may seem meet and proper, and your petitioner will ever pray.

EWING & HALE,
Att'ys for Complainant.

(For Exhibit A, referred to in petition, see Abstract, pp. 12 and 13.)
Filed December 1st, 1863. H. A. Copeland, clerk d. c.

Amended petition in former action.

In the district courts of Mills County, Iowa. February term, 1864.

MILLS COUNTY
vs.
THE BURLINGTON AND MISSOURI RIVER RAILroad Co. } Amended petition.

To the district court of Mills County, in chancery sitting:

Comes now your petitioner and for amended petition herein represents: That by virtue of an act of Congress, approved September 28th, 1850, entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," and by virtue of an act of the general assembly of the State of Iowa, entitled "An act to dispose of the swamp and overflowed lands within this State, and to pay the
86 expenses of selecting and surveying the same," passed January 13, 1853, and other acts of said general assembly supplementary thereto, and by virtue of an act of Congress, entitled "An act to confirm to the several States the swamp and overflowed lands selected under the act of Sept. 28, 1850, and the act of the 2d of March, 1849," approved March 3d, 1857, your petitioner, the County of Mills, in the State of Iowa, became the owner of the several tracts of land hereinafter specified, and more particularly designated and described in the list of said lands hereunto attached and made a part of this petition. Your petitioner says that said land' were duly and legally selected and returned as swamp and overflowed lands under said acts, and that by virtue of said several acts of Congress and the general assembly, your petitioner became the owner of the same and entitled thereto in fee simple, and to the full, free, and uninterrupted possession, use, and enjoyment of the same. Your petitioner further states that, relying in good faith upon her right in and to said several tracts of land acquired by virtue of the acts aforesaid, she has made divers contracts of sale to various individual citizens of said county and State, for numerous tracts of said lands, but that she has not conveyed

the same, but retains and still holds the right to said land vested in her by the several acts aforesaid.

2d. Complainant further showeth that the defendant herein, the B. & M. R. R. Co., pretends to claim title to said land, and assumes to be the owner thereof, by virtue of an act of Congress, entitled "A bill making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," approved 15th of May, 1856, and certain acts of the general assembly of the State of Iowa, as lands granted to said company to aid in the construction of a railroad from Burlington, on the Mississippi River, to a point on the Missouri River, near the mouth of the Platte River, and that said company denies the right of complainant to said lands, and threaten suits, and offers to sell said lands, and, in fact, has made contracts of sale for parts of said lands, thus casting a cloud upon the right and title of complainant, and raising doubts as to her capacity to convey said lands.

Your petitioner therefore prays that, inasmuch as she cannot have adequate relief in a court of law, this court may hear her cause in chancery, and render a decree fully and completely settling and decreeing the right and title in fee simple to said lands, and every parcel thereof, to be in your petitioner, and that all claim thereto, by or through the defendants, be declared void and held for naught, and for such other and further
87 relief in the premises, as in equity and good conscience may seem mete, and for costs of suit.

THOMAS EWING AND
WM. HALE,
Attorneys for Plaintiff.

For copy of Exhibit A referred to, see Abstract, pp. 12, 13.
Filed Aug. 10th, 1864.

H. A. COPELAND, *Clerk.*

NOTE.—The answer to original petition, filed April 8th, 1864, is omitted, for the reason that it is literally copied in the answer to the amended petition, and is included between the commencement of the last named pleading and *, ending with the words, "And asks that pl'ff's bill be dismissed."

Answer to amended petition in former action.

STATE OF IOWA, *ss:*

In the district court of Mills County. In chancery. (Equitable proceedings.)

MILLS COUNTY, PL'FF,
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD CO., DEF'T.

Now comes the B. & M. R. R. Co., the def't herein, and reserving all advantage of cause of demurrer to pl'ff's petition to the errors and insufficiencies, the this def't, answering to the petition as amended, says:

This def't denies having claimed or offered to sell, as alleged in said

petition or otherwise, the land described as the east half of the southeast quarter of section 1, and southeast quarter of southwest quarter of section 1, township 73 north, range 4 west, and disclaims title thereto.

2d. This def't denies that complainant is the owner of or is possessed of the legal title to the various tracts of land or any part thereof described in and attached to petitioner's bill, as in said bill or petition is alleged, or in any manner or by any right whatever. This def't denies that said lands or any part thereof were duly selected under said acts of Congress and legislative acts, as is in said bill alleged; denies that any such selection was ever made or returned as required by law; denies that such section was ever confirmed by act of Congress, as in said bill is stated and alleged of any and of all the lands described in said bill.

3d. This def't admits that this def't claims to own all the lands in said bill and exhibit described (except the tract first named in this an-
88 swer as to which this def't has disclaimed), as in said bill is alleged, by virtue of the act of Congress of 15th May, 1856, in said bill referred to, and certain acts of the legislature of this State of Iowa, and which are more fully referred hereinafter.

4th. This def't has no knowledge or information, nor means of information, nor any on which to form a belief, and has no belief, as to the truth of the statement that complainant has contracted to sell certain of said lands, and therefore, if material, requires proof thereof, and denies the truth of said allegation.

5th. This def't admits the offering for sale certain of said lands described in said petition and exhibit, and the sale of some tracts thereof, and claims the right so to do. This def't avers and states that by an act of Congress entitled "An act (or bill) respecting a grant of lands to the State of Iowa, in the alternate sections, to aid in the construction of certain railroads in said State," approved May 15th, 1856, there was granted to the State of Iowa for the purpose of aiding (among other things) in the construction of a railroad from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River, certain lands of the United States, and that the general assembly of the State of Iowa, by an act entitled "An act to accept the grant and carry into execution the trust conferred upon the State of Iowa, in alternate sections, to aid in the construction of railroad in said State," approved May 15th, 1856, granted to this def't so much and all of the lands, interest, rights, powers, and privileges as were or might be granted or conferred by said act of Congress of the 15th of May, 1856, to aid in the construction of the said railroad from said Burlington to the said Missouri River, in like trust to aid in the construction of said last-named railroad, and that in and by said act of general assembly this def't is expressly recognized as a corporate body, created and existing under the laws of Iowa; and as to the company and corporations referred to and intended in said act of Congress as beneficiaries therein, this def't furthermore avers and states that the lands in said complainant's bill and exhibit described (except the tract referred to herein above as not owned or claimed by the def't) were and are a part of the lands so granted by act of Congress and said legislative acts of the State of Iowa to said State and to this def't to aid in the construction of said railroads from said Burlington to said Missouri River as aforesaid, and have been and are listed and set off and certified and approved to this def't on

the same, but retains and still holds the right to said land vested in her by the several acts aforesaid.

2d. Complainant further showeth that the defendant herein, the B. & M. R. R. Co., pretends to claim title to said land, and assumes to be the owner thereof, by virtue of an act of Congress, entitled "A bill making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," approved 15th of May, 1856, and certain acts of the general assembly of the State of Iowa, as lands granted to said company to aid in the construction of a railroad from Burlington, on the Mississippi River, to a point on the Missouri River, near the mouth of the Platte River, and that said company denies the right of complainant to said lands, and threaten suits, and offers to sell said lands, and, in fact, has made contracts of sale for parts of said lands, thus casting a cloud upon the right and title of complainant, and raising doubts as to her capacity to convey said lands.

Your petitioner therefore prays that, inasmuch as she cannot have adequate relief in a court of law, this court may hear her cause in chancery, and render a decree fully and completely settling and decreeing the right and title in fee simple to said lands, and every parcel thereof, to be in your petitioner, and that all claim thereto, by or through the defendants, be declared void and held for naught, and for such other and further
87 relief in the premises, as in equity and good conscience may seem mete, and for costs of suit.

THOMAS EWING AND
WM. HALE,
Attorneys for Plaintiff.

For copy of Exhibit A referred to, see Abstract, pp. 12, 13.
Filed Aug. 10th, 1864.

H. A. COPELAND, *Clerk.*

NOTE.—The answer to original petition, filed April 8th, 1864, is omitted, for the reason that it is literally copied in the answer to the amended petition, and is included between the commencement of the last named pleading and *, ending with the words, "And asks that pl'ff's bill be dismissed."

Answer to amended petition in former action.

STATE OF IOWA, *ss:*

In the district court of Mills County. In chancery. (Equitable proceedings.)

MILLS COUNTY, PL'FF,
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD CO., DEF'T.

Now comes the B. & M. R. R. Co., the def't herein, and reserving all advantage of cause of demurrer to pl'ff's petition to the errors and insufficiencies, the this def't, answering to the petition as amended, says: This def't denies having claimed or offered to sell, as alleged in said

petition or otherwise, the land described as the east half of the southeast quarter of section 1, and southeast quarter of southwest quarter of section 1, township 73 north, range 4 west, and disclaims title thereto.

2d. This def't denies that complainant is the owner of or is possessed of the legal title to the various tracts of land or any part thereof described in and attached to petitioner's bill, as in said bill or petition is alleged, or in any manner or by any right whatever. This def't denies that said lands or any part thereof were duly selected under said acts of Congress and legislative acts, as is in said bill alleged; denies that any such selection was ever made or returned as required by law; denies that such section was ever confirmed by act of Congress, as in said bill is stated and alleged of any and of all the lands described in said bill;

3d. This def't admits that this def't claims to own all the lands in said bill and exhibit described (except the tract first named in this an-
88 swer as to which this def't has disclaimed), as in said bill is alleged, by virtue of the act of Congress of 15th May, 1856, in said bill referred to, and certain acts of the legislature of this State of Iowa, and which are more fully referred hereinafter.

4th. This def't has no knowledge or information, nor means of information, nor any on which to form a belief, and has no belief, as to the truth of the statement that complainant has contracted to sell certain of said lands, and therefore, if material, requires proof thereof, and denies the truth of said allegation.

5th. This def't admits the offering for sale certain of said lands described in said petition and exhibit, and the sale of some tracts thereof, and claims the right so to do. This def't avers and states that by an act of Congress entitled "An act (or bill) respecting a grant of lands to the State of Iowa, in the alternate sections, to aid in the construction of certain railroads in said State," approved May 15th, 1856, there was granted to the State of Iowa for the purpose of aiding (among other things) in the construction of a railroad from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River, certain lands of the United States, and that the general assembly of the State of Iowa, by an act entitled "An act to accept the grant and carry into execution the trust conferred upon the State of Iowa, in alternate sections, to aid in the construction of railroad in said State," approved May 15th, 1856, granted to this def't so much and all of the lands, interest, rights, powers, and privileges as were or might be granted or conferred by said act of Congress of the 15th of May, 1856, to aid in the construction of the said railroad from said Burlington to the said Missouri River, in like trust to aid in the construction of said last-named railroad, and that in and by said act of general assembly this def't is expressly recognized as a corporate body, created and existing under the laws of Iowa; and as to the company and corporations referred to and intended in said act of Congress as beneficiaries therein, this def't furthermore avers and states that the lands in said complainant's bill and exhibit described (except the tract referred to herein above as not owned or claimed by the def't) were and are a part of the lands so granted by act of Congress and said legislative acts of the State of Iowa to said State and to this def't to aid in the construction of said railroads from said Burlington to said Missouri River as aforesaid, and have been and are listed and set off and certified and approved to this def't on

and under date of the respective exhibits hereto annexed, by the proper authority of the United States under and by virtue of said acts of Congress and legislative acts, as will more fully appear by certified copies of lists and certificates setting off the same hereto annexed as a part of this answer, and
89 respectively marked "A," "B," "C," and "D," the original of which will be produced and read in evidence in the trial of this cause, which said lists and certificates confer legal title to said lands on this def't, and by virtue of which def't makes and claims title thereto. Wherefore this def't denies the right of complainant to said lands (except the tract disclaimed as aforesaid), and says that this def't has the better legal and equitable title thereto, and to each and every tract and parcel thereof. Def't also denies the right of complainant to the relief claimed, and all relief whatever, and asks that complainant's bill be dismissed.* And this def't, answering, further says that the said railroad and the line and route thereof was actually surveyed and marked out on the ground as the permanent route thereof through the said county of Mills, in the State of Iowa, on and between the 9th day of October, 1856, and the 15th day of October, 1856, by the route and line laid down and designated on the plat thereof and of the adjacent lands hereto annexed and marked Exhibit — to def't's answer, and which is given as and made a part of this answer, with all the markings, writings, figures and illustrations, localities and dates thereon entered and laid down, and all of which def't avers are true and correct in point of fact; and that said railroad line was thereafter, to wit, on the 24th day March, 1857, formally adopted by said railroad company as the permanent line of said railroad through said Mills County, and that said adoption, when so made, related back to the times of the said actual survey and marking of the different sections indicated by flags on the line of said road, and that such different sections were respectively so surveyed and located and marked on the respective days thereto entered and marked severally between said flags on said map, all which is given as a part of this answer. And now, having fully answered, def't prays to be dismissed with judgment for def't's costs.

DAVID RORER,
Attorney and Solicitor for Def't.

GENERAL LAND OFFICE, *March* 25, 1862.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify the annexed, from page 1 to 5, inclusive, is a true and literal exemplification of the original approved list on file in this office.

{SEAL OF THE U. S. GENERAL LAND OFFICE.} In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. EDMUNDS,
Commissioner of the General Land Office.

90 EXHIBIT A.

B. & M. R. R.—Supplemental list of lands—Act of May, 1856—Council Bluffs district, Iowa—North of the base line and west of the fifth principal meridian, Iowa—The B. & M. R. R.—Railroad list—Six-mile limits, approved March 21st, 1862.

No.	Parts of sections.	Sec.	T'p.	R'ge.	Acres.
1	NE. NW	3	71	34	35.61
2	SW. NE. and NE. SW	3	71	34	80
3	SW. SW	3	71	34	40
4	SE. SE	5	71	34	40
5	W. h. SW. and NE. SE	7	71	34	134.95
6	NE. NE. and SE. SW	31	72	34	80
7	S. h. NE	35	72	34	80
8	NW. NW	19	70	35	35.59
9	W. h. SW	1	71	35	80
10	NE. NW. and SW. NW. and S. h. NE	11	71	35	160
11	N. h. SE. and SE. SE	11	71	35	120
12	W. h. NW	15	71	35	80
13	NE. NE. and SE. q. and SE. SW	17	71	35	240
14	NE. SW	17	71	35	40
15	SE. SE	17	71	35	40
16	SE. SE. and SW	31	71	35	200
17	SE	11	72	35	160
18	S. h. NE. and NW. NE	15	72	35	120
19	S. h. NW. and NW. SE	15	72	35	120
20	N. h	29	72	35	320
21	E. h. NE. and E. h. SE	5	70	36	160.09
22	N. h. SW	9	70	36	80
23	E. h. NE	17	70	36	80
24	W. h. SE. and SE. SE	21	70	36	120
25	E. h. SW. and E. h. NW	21	70	36	160
26	E. h. SW. and SW. SW	3	71	36	120
27	E. h. SE	9	71	36	80
28	E. h. SE	21	71	36	80
29	W. h. NW. and NE. NW	23	71	36	120
30	NE. SE	27	71	36	40
31	SW. SE	21	72	36	40
32	E. h. NW. and E. h. SW	9	71	37	160
33	W. h. NE. and NE. NW	29	71	37	120
34	W. h. NE. and NE. SW	33	71	37	120
35	W. h. NE. and SW	7	71	38	237.89
36	NW. NE	17	72	38	40
					3,964.13

SAM'L J. KIRKWOOD.

91 EXHIBIT A—Continued.

North of base line and west of the fifth principal meridian, Iowa—The B. & M. R. R.—Council Bluffs district—Railroad list—Six-mile limits.

No.	Parts of sections.	Sec.	T'p.	R'ge.	Acres.
1	W. h. SW. and NE. SW	29	72	38	120
2	E. h. SW. and SW. NE	31	72	"	120
3	SW. SW	31	73	"	36.65
4	W. h. SE. and SW. NE	1	71	39	120
5	S. h. NW	17	"	"	80
6	E. h. NE	19	"	"	80
7	SW. SE	11	72	"	40
8	NE. NW	23	"	"	40
9	NW. NE	27	"	"	40
10	W. h. NE. and SW. NE. and N. h. NW	5	"	40	146.95
11	SE. NW. and SW. SW	5	"	"	80
12	W. h. sec. and NE. q. E. h. SE	7	"	"	557.88
13	E. h. NE. and W. h. NW	17	"	"	160
14	N. h. sec	19	"	"	321.93
15	S. h. sec	21	73	"	320
16	E. h. sec. and NW	29	"	"	480
17	N. h. SW. and SE. SW	29	"	"	120
18	W. h. sec. and W. h. NE	31	"	"	380.44
19	SE. q. and NE. NE	31	"	"	200
20	Whole of	9	71	41	640
21	NW. q. and W. h. SW. and NW. SE	11	"	"	280
22	Whole of	15	"	"	640
23	NE. NE	17	"	"	40
	E. h. sec., SW. q. and NE. NW	21	"	"	520
	W. h. sec., W. h. NE	27	"	"	400
	SE. q. & E. h. NE. & E. h. NW. q. E. h. SW. & NW. SW	29	"	"	440
	SE. q. and E. h. SW	1	72	"	240
	S. h. sec., E. h. NE. and NW. NE	13	"	"	440
	S. h. NW	19	"	"	80.81
	E. h. sec. SW. q. and E. h NW	23	"	"	560
	W. h. sec. and NE	25	"	"	480
	NE. q. and E. h. SE	21	"	"	240
	SW	29	"	"	160
	E. h. sec., SW. q. NW. NW	35	"	"	520
	SW. SW	19	73	"	35.17
	E. h. NW. and W. h. NE	19	"	42	19.60
	W. h. SE. and SE. SW	19	"	"	120
					9,439.90

SAMUEL J. KIRKWOOD.

92 EXHIBIT A—Continued.

North of base line and west of the 5th principal meridian, Iowa—The B. & M. R. R. list—Council Bluffs district—Six-mile limits.

No.	Parts of sections.	Sec.	T'p.	R'ge.	Acres.
1	N. h. NE	25	73	42	80
2	NE. NW. and SW. NE	31	"	"	80
3	NW. SE	31	"	"	40
4	NW. and W. h. SE	1	71	43	219. 46
5	N. h. section SE	3	"	"	451. 24
6	E. h. SW. and NW. SW	3	"	"	120
7	NW. SE. S. h. NE. h. and N. h. SW	5	"	"	451. 47
8	W. h. sec., E. h. SE. and W. h. NE	9	"	"	480
9	N. h. NE. and N. h. NW	11	"	"	160
10	S. h. sec. and W. h. NW	17	"	"	400
11	NE. NE	19	"	"	40
12	W. h. sec., W. h. NE. and NE. NE	5	72	"	403. 88
13	SW. NW	7	"	"	41. 50
14	NE	9	"	"	160
15	SE	17	"	"	160
16	W. h. sec	19	"	"	320. 12
17	Whole of	21	"	"	640
18	SW. SW	23	"	"	40
19	Whole of	27	"	"	640
20	E. h. sec., SW. and W. h. NW	29	"	"	560
21	E. h. sec	31	"	"	320
22	W. h. sec., W. h. NE. and W. h. SE	33	"	"	480
23	E. h. sec. and S. h. NW	35	"	"	400
24	S. h. NE. and E. h. S E. and NW. NW	19	"	"	201. 30
25	W. h. NE. and W. h. SE	31	"	"	160
26	Whole of	1	"	44	542. 95
27	Lot 1	11	"	"	15. 68
28	W. h. NE. and NE. NW	13	"	"	120
29	NW. SE. and NE. SW	13	"	"	80
30	E. h. NW. and W. h. NE	25	"	"	160
31	W. h. SE. and NE. SW	25	"	"	120
32	Lots 2 and 3	23	73	"	64. 50
33	Whole of	27	"	"	12. 60
34	Lots 1, 2, and 3, and NE. NW	35	"	"	191. 27
					8, 335. 98

Making a total of 21,740 acres and one-hundredth of an acre.

SAMUEL J. KIRKWOOD.

93 GENERAL LAND OFFICE, *March 14th*, 1862.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the foregoing, on pages 1 to 4, inclusive, is a true and correct list of the tracts of land within the six-mile limits granted to the State of Iowa by an act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State, being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six sections in width on each side of the railroad from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River," known as "The B. & M. R. R., within the State of Iowa," and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of 15th of May, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first herein above written.

[SEAL.]

J. M. EDMUNDS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
March 21*st*, 1862.

Approved, subject to the conditions and rights above mentioned.
CALEB B. SMITH, *Secretary.*
SAMUEL J. KIRKWOOD.

UNITED STATES OF AMERICA,
State of Iowa, ss:

Know that I, Samuel J. Kirkwood, governor of the State of Iowa, and keeper of the great seal thereof, do hereby certify that the foregoing papers, that is to say, a paper purporting to be a certificate of J. M. Edmunds, Commissioner of the General Land Office, dated General Land Office, March 25th, 1862, also a paper purporting to be a supplemental list of the lands subject to sale at Council Bluffs within the six-mile limits, granted to the State of Iowa by the act of Congress approved the 15th May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six sections in width on each side of the railroad from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River, known as "The B. & M. R. R." said list occupying four pages, and numbered 1, 2, 3, and
94 4; and a paper purporting to be copy of a certificate of J. M. Edmunds, Commissioner, dated General Land Office, March 14th, 1862, to which is attached the words, "Approved, subject to the conditions and rights above mentioned," purporting to be signed by Caleb B. Smith, Secretary, further dated Department of the Interior, March 21st, 1862; on each and all of which papers and pages I have affixed my signature, by way of attestation, on the right-hand lower corners, are true copies of the originals transmitted to me and by me deposited for safe keeping in the office of the register of the State land office of the State of Iowa.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa.

{THE GREAT SEAL OF THE STATE OF IOWA.} Done at Des Moines, this 12th day of April, in the year of our Lord one thousand eight hundred and sixty-two, of the Independence of the United States the eighty-sixth, and of this State the sixteenth.

SAMUEL J. KIRKWOOD.

By the Governor:
ELIJAH SELLS, *Secretary of State.*

GENERAL LAND OFFICE, *March* 25, 1862.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed, from page 1 to page 5, inclusive, is a true and literal exemplification of the original approved list on file in this office.

{SEAL OF THE U. S. GENERAL LAND OFFICE.} In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. EDMUNDS,
Commissioner of the General Land Office.

THE BURLINGTON AND MISSOURI RIVER R. R.

Supplemental list of lands in the district of lands subject to sale at Council Bluffs, outside the six and within the fifteen mile limits of the reserve, to satisfy the grant made to the State of Iowa by an act of Congress approved the 12th of May, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the lands selected by the agent of the governor of the State of Iowa from the lands of the United States, in alternate sections and parts of sections, designated by odd numbers, nearest to the tier of sections within six sections in width on each side of the railroad from Burlington, on the Mississippi River, to a point on the Mis-
95 souri River near the mouth of the Platte River, and in lieu of the lands in the alternate sections, designated by odd numbers, within said six sections in width, which the United States has legally sold or otherwise appropriated, or to which the rights of pre-emption have attached.

SAMUEL J. KIRKWOOD.

EXHIBIT B.

North of base line and west of the fifth principal meridian, Iowa—The B. & M. R. R.—Council Bluffs district—Railroad list—Fifteen-mile limits.

No.	Parts of sections.	Sec.	T'p.	R'ge.	Acres.
1	NW	1	69	34	150.09
2	E. h. SW. and SW. SW	9	"	"	120
3	E. h. SW	15	"	"	80
4	NW	17	"	"	160
5	SW	71	"	"	160
6	NW. and W. h. SE	23	"	"	240
7	E. h. NW	25	"	"	80
8	NE	27	"	"	160
9	NE. NW	29	"	"	40
10	NE. SE	1	73	"	40
11	SE. SE	15	"	"	40
12	SW. NW	23	"	"	40
13	NE. and N. h. NW	27	"	"	240
14	S. h. SW	29	"	"	80
15	W. h. SE. and NE. NE	31	"	"	120
16	W. h. E. h	3	68	39	62.71
17	NE	11	69	"	160
18	NW. and N. h. NE	13	"	"	240
19	SW. NE. and SW. SW	25	"	"	80
20	NE. NE	27	"	"	40
21	S. h. NE. and NE. NE	35	"	"	120
22	E. h. SE	35	"	"	80
23	E. h. NW. and W. h. SW	7	68	36	183.10
24	E. h. NW. and S. h. NW. and W. h. NE	9	"	"	240
25	NE. SE. and NE. SW	9	"	"	80
26	SW. and SW. NE. and SE. NW	1	69	"	240
27	W. h. SE. and SE. SE	1	"	"	120
28	E. h. sec	5	"	"	321
29	W. h. sec	9	"	"	320
30	W. h. NE. and SE. NE. and W. h. SE	23	"	"	200
31	NE. SE	25	"	"	40
32	SE. and SE. NE	27	"	"	200
33	SE. and W. h. NE. and NE. NE	29	70	"	200
34	E. h. NW. and S. h. SW	33	"	"	160
35	NE	7	73	"	160
36	SW	9	63	37	160
37	SW	15	"	"	160
					3,377.40

SAMUEL J. KIRKWOOD.

96 EXHIBIT B—Continued.

North of base line and west of the 5th principal meridian, Iowa—The B. & M. R. R. list—Council Bluffs district—Fifteen-mile limits.

No.	Parts of sections.	Sec.	T'p.	R'ge.	Acres.
38	E. h. sec. and NW	17	69	37	480
39	NE. and E. h. NW. and SW. NW	19	"	"	281. 35
40	NW	21	"	"	160
41	NW	29	"	"	160
42	W. h. SE. and E. h. SW	25	70	"	160
43	W. h. SE. and NE. SW	29	73	"	120
44	SE. SE	7	74	"	40
45	N. h. NW. and SW. SW	17	"	"	120
46	NW. NE	13	73	38	40
47	SW. NW. and NW. SW	11	74	"	80
48	Whole of	5	69	39	607. 94
49	Whole of	7	"	"	630. 64
50	E. h. NW. and SW. NW	1	70	"	119. 10
51	E. h. SW. and SW. SW	1	"	"	120
52	NW	13	"	"	160
53	N. h. SW	5	69	40	80
54	S. h. SW. and SE. NE	"	"	"	120
55	W. h. SE. and NE. SE	"	"	"	120
56	N. h. NE. and N. h. NW. and SW. NW	7	"	"	207. 53
57	SE. and E. h. NE	1	70	"	239. 94
58	W. h. sec. and SW. SE	13	"	"	360
59	NE. and W. h. SE. and E. h. SW	23	"	"	320
60	SE. NE. and SE. SW	27	"	"	240
61	SE. and S. h. NE. and SE. SW	33	"	"	280
62	W. h. SW. and W. h. NW	33	"	"	160
63	SW. and E. h. NW	1	73	"	235. 23
64	W. h. NW. and W. h. SW	3	"	"	155. 85
65	Whole of	9	"	"	640
66	S. h. SE. and NE. SE	11	"	"	120
67	S. h. sec. and NW. and S. h. NE	15	"	"	560
68	E. h. SW. and W. h. SE. and SE. SE	17	"	"	200
69	N. h. sec	21	"	"	320
70	SE. and W. h. NE. and SE. NE	15	74	"	280
71	E. h. NW. and SW. NW	21	"	"	120
72	SW. NE. and SE	27	"	"	200
73	E. h. SE	33	"	"	80
74	Whole of	5	69	"	626. 80
					8, 944. 38

SAMUEL J. KIRKWOOD.

97 EXHIBIT B—Continued.

North of the base line and west of the fifth principal meridian, Iowa—The B. & M. R. R.—Railroad list—Council Bluffs district—Fifteen-mile limits.

No.	Parts of sections.	Sec.	T'p.	R'ge.	Acres.
75	SE. NE. and NE. SE	7	69	41	80
76	S. h. sec. and E. h. NE	9	"	"	400
77	SW. NE. and SW. NW	9	"	"	80
78	S. h. sec. and S. h. NE. and S. h. NW	9	"	"	480
79	NW. and W. h. SW	3	70	"	234. 83
80	S. h. sec. and N. h. NW. and NE	5	"	"	541. 48
81	S. h. NW	5	"	"	80
82	E. h. NE. and E. h. SE	7	"	"	160
83	Whole of	9	"	"	640
84	NE. NW	15	"	"	40
85	E. h. sec. and NW	17	"	"	480
86	W. h. SW. and NE. SW	17	"	"	120
87	E. h. SE. and SW. SE	19	"	"	120
88	E. h. sec	21	"	"	320
89	W. h. NW	27	"	"	80
90	W. h. sec. and W. h. NE. q. and W. h. SE	29	"	"	480
91	E. h. NE. and E. h. SE. and SW. SE	31	"	"	200
92	S. h. SE. and S. h. SW. and NW. SW	33	"	"	200
93	W. h. SE	27	71	"	80
94	SE. SE	31	"	"	40
95	E. h. sec. and SW	33	"	"	480
96	E. h. NW. and NW. NW	33	"	"	125
97	SE. SE	13	73	"	40
98	W. h. NW	15	74	"	80
99	NE. SE	21	"	"	40
100	E. h. SE. and SW. SE	29	"	"	120
101	NE. SW. and N. h. SE	1	73	44	390
102	NE. and E. h. SW	5	"	"	234
103	E. h. NE. and E. h. SE	11	"	"	160
104	NW. NW	13	"	"	40
105	W. h. NW	33	74	42	80
106	W. h. NE. and E. h. NW	3	69	43	145. 42
107	E. h. sec. and E. h. SW. and SE. NW	5	"	"	429. 30
108	NE. SW. and SW. SW	1	70	"	80
109	W. h. sec	3	"	"	310. 45
110	Lots 1, 3, and 4 and NE. NE	5	"	"	182. 45
111	E. h. SE. and SW. SE	5	"	"	120
					7, 908. 00

SAM'L J. KIRKWOOD.

98 EXHIBIT B—Continued.

North of base line and west of the 5th principal meridian, Iowa—The B. & M. R. R. list—Council Bluffs district—Fifteen-mile limits.

No.	Parts of sections.	Sec.	T'p.	R'ge.	Acres.
112	S. h. sec. and W. h. NW. and SE. NW	9	70	43	440
113	E. h. NE. and SW. NE	"	"	"	120
114	W. h. sec	11	"	"	320
115	S. h. sec. and S. h. NE. and S. h. NW	15	"	"	480
116	NW. SE. and SW. NE	17	"	"	360
117	E. h. SW. and NW. SW	"	"	"	120
118	Lot 3 in	19	"	"	44. 80
119	NW. q. and SE. q. and E. h. NE	21	"	"	400
120	N. h. sec. and S. h SE. and S. h. SW	27	"	"	480
121	E. h. sec. and W. h. NW. and W. h. SW	29	"	"	480
122	S. h. sec. and E. h. NE. and NE. NW	31	"	"	399. 53
123	W. h. sec. and SE. and W. h. NE	33	"	"	360
124	NW. and W. h. SW. and NW. NE	21	71	"	280
125	E. h sec	29	"	"	320
126	SE. and S. h. NE. and NW. NE	33	"	"	280
127	E. h. SW. and SE. NW	"	"	"	120
128	W. h. SW. and SE. SW	35	"	"	120
129	SW. SE	"	"	"	40
130	E. h. SE. and NW. SE	1	73	"	120
131	E. h. NW. and E. h. SW	17	"	"	160
132	E. h. NE. and NW. NE	13	"	44	120
133	NE. SE	"	"	"	40
					5, 804. 33

Making a total of 28,034 acres and eleven-hundredth' of an acre.

GENERAL LAND OFFICE, *March* 14, 1862.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify the foregoing, on pages 1 to 4 inclusive, is a true and correct list of the tracts of land selected by the agent of State of Iowa outside of the six and within the fifteen mile limits under an act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," the said selections being from the lands of the United States, in the alternate sections, designated by odd numbers, most contiguous to the tier of sections within six sections in width on each side of the railroad "from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River," known as "The B. & M. R. R.," and being in lieu of the lands in the alternate sections designated by odd numbers, within said six sections in width on each side of said road, which the United States had legally sold, or to which
99 the right of pre-emption had legally attached prior to the period at which the rights of the State inured under said grant; and they are now submitted for the approval of Secretary of the Interior, in accordance with the requirements of said act of the 15th of May, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first hereinabove written.

[SEAL.] J. M. EDMUNDS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
March 12*st*, 1862.

Approved, subject to the conditions and rights above mentioned.
CALEB B. SMITH,
Secretary.
SAMUEL J. KIRKWOOD.

UNITED STATES OF AMERICA,
State of Iowa, ss:

Know ye that I, Samuel J. Kirkwood, governor of the State of Iowa and keeper of the great seal thereof, do hereby certify that the foregoing papers, that is to say, a paper purporting to be a certificate of J. M. Edmunds, Commissioner of the General Land Office, dated General Land Office, March 25th, 1862; also, a paper purporting to be a supplemental list of lands in the district of lands subject to sale at Council Bluffs outside of the six and within the fifteen mile limits of the reserve to satisfy the grant made to the State of Iowa by an act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the lands selected by the agent of the governor of the State of Iowa, from the land of the United States in alternate sections and parts of sections designated by odd numbers nearest to the tier of sections within six sections in width on each side of the railroad from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River, and in lieu of the lands in the alternate sections designated by odd numbers within said six sections in width, which the United States had legally sold or otherwise appropriated, or to which the rights of pre-emption have attached; said list occupying four pages, and numbered 1, 2, 3, and 4, and a paper purporting to be copy of a certificate of J. M. Edmunds, Commissioner, dated Gen-
100 eral Land Office, March 14th, 1862, to which is attached the words "Approved, subject to the conditions and rights above mentioned," purporting to be signed by Caleb B. Smith, Secretary, and dated Department of the Interior, March 21st, 1862, on each and all of which papers and pages I have affixed my signature, by way of attestation, on the right hand lower corners, are true copies of the originals transmitted to me and by me deposited for safe keeping in the office of the register of the State land office of the State of Iowa.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Iowa.

{THE GREAT SEAL OF THE STATE OF IOWA.} Done at Des Moines, this 12th day of April, in the year of our Lord one thousand eight hundred and sixty-two, of the Independence of the United States the eighty-sixth, and of this State the sixteenth.

SAMUEL J. KIRKWOOD.

By the governor:
ELIJAH SELLS,
Secretary of State.

EXHIBIT C.

North of base line and west of the fifth principal meridian, Iowa—The B. & M. R. R.—Council Bluffs district—Railroad list—Six-mile limits.

No.	Parts of sections.	Sec.	T'p.	R'ge.	Acres.
1	N. fr. h. NW	5	71	34	75.21
2	NW. NW	5	"	"	40
3	W. fr. h. and SW. SW	7	70	35	69.78
4	SE	17	"	"	160
5	SW. NE	15	71	"	40
6	SE. NW	"	"	"	40
7	W. h. NE	17	70	36	80
8	NW. fr. q	19	71	37	153.48
9	NE. SE.	20	"	"	40
10	W. h. SE	"	"	"	80
11	SW. NE	"	"	38	40
12	SE. NW	"	"	"	40
13	NW. SE	"	"	"	40
14	NE. SW	"	"	"	40
15	W. h. sec	29	72	39	320
16	SE	31	"	"	160
17	SW	17	"	43	160
					1,578.47

Making in all a total of $1,578.47 acres.

SAMUEL J. KIRKWOOD.

101 GENERAL LAND OFFICE, *February 26th*, 1863.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the foregoing, on page 1, is a true and correct list of the tracts of land within the six-mile limits granted to the State of Iowa by the act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State, being the vacant and unappropriated lands in the alternate sections designated by odd numbers, for six sections in width on each side of the railroad from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River," known as "The B. & M. R. R., within the State of Iowa," and they are now submitted for the approval of the Secretary of the Interior, in accordance with the requirements of said act of 15th of May, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first herein above written.

{SEAL OF THE GENERAL LAND OFFICE OF THE UNITED STATES.}

J. M. EDMUNDS.
Commissioner.

DEPARTMENT OF THE INTERIOR, *April 7th*, 1863.

Approved, subject to the conditions and rights above mentioned.

J. P. USHER,
Secretary.

GENERAL LAND OFFICE, *April* 11, 1863.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed, from page 1 to page 2 inclusive, is a true and literal exemplification of the original approved list on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

{ SEAL OF THE U. S. GENERAL LAND OFFICE. }

J. M. EDMUNDS,
Commissioner of the General Land Office.

THE BURLINGTON AND MISSOURI RIVER R. R.

Supplemental list of lands in the district of lands subject to
102 sale at Council Bluffs, within the six-mile limits, granted to the State of Iowa by an act of Congress approved the 15th of May, 1856, entitled "An act making a grant of land to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," being the vacant and unappropriated lands in alternate sections, designated by odd numbers, for six sections in width on each side of the railroad from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River, known as the B. & M. R. R.

GENERAL LAND OFFICE, *April* 11*th*, 1863.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify that the annexed, from pages 1 to three inclusive, is a true and literal exemplification from the original on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

{ SEAL OF THE UNITED STATES GENERAL LAND OFFICE. }

J. M. EDMUNDS,
Commissioner Gen. Land Office.

THE BURLINGTON & MISSOURI RIVER RAILROAD.

Supplemental list of lands in the district of lands subject to sale at Council Bluffs, outside of the six and within the fifteen mile limits of the reserve, to satisfy the grant made to the State of Iowa by the act of Congress, approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in the State, being the lands selected by the agent of the governor of the State of Iowa, from the lands of the United States, in alternate and parts of sections, within six sections in width on each side of the railroad, from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River," and in lieu of the lands in the alternate sections, designated by odd numbers, within said six sections in width, which the United States had legally sold or otherwise appropriated, or to which the rights of preemption have attached.

103

EXHIBIT D.

North of base line and west of the 5th principal meridian, Iowa—The B. & M. R. R. list—Council Bluffs district—Fifteen-mile limits.

No.	Parts of sections.	Sec.	T'p.	R'ge.	Acres.
1	NE. fr.	5	69	34	159.96
2	E. h. NW	7	"	"	80
3	W. h. NE	"	"	"	80
4	SW. NW	9	"	"	40
5	NW. SW	"	"	"	40
6	SW	13	"	"	160
7	NE	17	"	"	160
8	NE	23	"	"	160
9	SW. NE	11	70	"	40
10	NE. SE	"	"	"	40
11	W. h. SE	"	"	"	80
12	W. h. SE	1	69	35	80
13	E. h. SW	"	"	"	80
14	SE	11	"	"	160
15	NE	33	"	"	160
16	NW. NW	11	73	"	40
17	N. h. SW	"	"	"	80
18	NE. fr	1	"	36	149.98
19	NE. SE	3	"	"	40
20	SE	5	"	"	160
21	NE	9	"	"	160
22	NE	33	74	"	160
23	SE	"	"	"	160
24	SE	7	69	37	160
25	NE	11	"	"	160
26	SE	15	"	"	160
27	NW. fr. NW	19	"	"	41.02
28	E. h. SW	5	70	"	80
29	SW. SW	"	"	"	40
30	E. h. NE. and SW. NE	7	"	"	120
31	E. h. SW	"	"	"	80
32	SW. fr. SW	"	"	"	35.43
33	E. h. NW	27	73	"	80
34	NE. SW	"	"	"	40
35	W. h. SE	11	69	38	80
36	E. h. SW	"	"	"	80
	Am't forward				3,626.39
104	Am't bro't frd.				3,626.39
37	SE. SE	13	69	38	40
38	E. h. NE	15	"	"	80
39	N. h. NE	9	70	"	80
40	N. h. NW	"	"	"	80
41	E. h. NE	35	"	"	80
42	W. h. sec	33	71	"	320
43	NE. SE	7	70	39	40
44	NE. SE	17	73	40	40
45	W. h. NE	7	"	41	80
46	N. fr. h. NW	"	"	"	72.12
47	W. h. SE	11	"	"	80
48	SE. SW	"	"	"	20
49	NE. NE	"	70	43	40
51	W. h. NW. and SE. NW	13	"	"	120
	NE. SW	"	"	"	40
					4,860.51

Making a total of 4,860.51.

GENERAL LAND OFFICE, *February 26th*, 1862.

I, J. M. Edmunds, Commissioner of the General Land Office, do hereby certify the foregoing, on pages 1 and 2 inclusive, is a true and correct list of the tracts of land selected by the agent of State of Iowa outside of the six and within the fifteen mile limits under an act of Congress approved the 15th of May, 1856, entitled "An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of certain railroads in said State," the said selections being from the lands of the

United States, in the alternate sections, designated by odd numbers, most contiguous to the tier of sections within six sections in width on each side of the railroad "from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of the Platte River," known as "The B. & M. R. R.," and being in lieu of the lands in the alternate sections designated by odd numbers, within said six sections in width on each side of said road, which the United States had legally sold, or to which the right of pre-emption had legally attached prior to the period at which the rights of the State inured under said grant; and they are now submitted for the approval of Secretary of the Interior, in accordance with
105 the requirements of said act of the 15th of May, 1856, subject to all its conditions, and to any valid interfering rights which may exist to any of the tracts embraced in the foregoing list.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the General Land Office to be affixed, at the city of Washington, on the day and year first herein above written.

{ SEAL OF THE GENERAL LAND OF THE UNITED STATES. } J. M. EDMUNDS, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
April 7th 1863.

Approved, subject to the conditions and rights above mentioned.
J. P. USHER, *Secretary.*

Exhibit , being plat of road referred to in the foregoing answer as filed in the office of the secretary of state March 27th, 1857, for copy of which see Abstract, pp.

(For copy of decree in former action see Abstract, p. 14.)

XVIII. Pl'ff next read in evidence the opinion of the supreme court of Iowa, as found in 22 Iowa, pp. 91 to 130, affirming the judgment of the district court, and refererce is here made to said report without reprinting the same in this place; also an authenticated copy of the judgment of said supreme court in said cause, at June term, 1867 (Transcript, pp. 656 and 885), which judgment (omitting the heading and style) is as follows:

"June term, 1867, appeal from Mills County.

"At the argument term, held at Davenport in April last, the court ordered that this cause be affirmed and filed their written opinion. It is now considered by the court that the judgment of the court below be, and the same hereby is, affirmed; that a writ of procedendo issue accordingly, and that the appellee have and recover of and from the appellant the costs in this behalf laid out and expended at this court, taxed at $19.30, and that execution issue therefor."

(Duly authenticated.)

XIX. Pl'ff offered in evidence an authenticated copy of the docket entry in said cause in the Supreme Court of the United States, taken to the Supreme Court of the United States on writ of error by the
106 B. & M. R. R. Co. as pl'ff in error, and the docket entries of the Supreme Court of the United States in the case of the B. & M. R. R. Co. vs. Fremont County, Iowa, pending there on writ of error from the supreme court of the State of Iowa, these cases being numbered in that court 39 and 40, respectively (Transcript, pp. 656 and 874).

D. Rorer 39 J. Ewing	1867. Dec. 7	The B. & M. R. R. Co., pl'ff in error. Mills County, Iowa.	Iowa supreme court. '69, Oct. 25th, continued. '70, Feb. 2d, ordered by the court to be submitted on the record, to abide the decision in No. 40. '70, Feb 7th, adjudged to be affirmed with costs.	Affirmed with costs, 7th Feb., '70.
D. Rorer 40 J. A. Harvey	1867. Dec. 7	The B. & M. R. R. Co., pl'ff in error. Fremont Co., Iowa.	Iowa supreme court. '69, Oct. 25th, stipulation of counsel to submit filed. '69, Nov. 3d, submitted. '70, Feb. 7th, adjudged to be affirmed with costs.	Affirmed with costs, 7th Feb., '70.

True copy of docket entries in cases of B. & M. R. R. Co. vs. Mills County and B. & M. R. R. Co. vs. Fremont County, Nos. 39 and 40, December term, 1869.

[SEAL.]

D. W. MIDDLETON,
Clerk Supreme Court U. S.

XX. Pl'ff next offered an authenticated copy of the opinion of the Supreme Court of the United States in Railroad Company vs. Fremont County, December term, 1869. Reference is here made to 9 Wall., pp. 89–95, for said opinion without reproducing same here (Transcript, 657 and 880).

And also the judgment of said court in said opinion, as follows (Transcript, 657, 876, and 878):

"No. 40, Supreme Court of the United States, December term, 1869. The B. & M. R. R. Co. *vs.* pl'ff in error, Fremont County, Iowa. In error to the supreme court of the State of Iowa.

107 "This cause came on to be heard on the transcript of the record from the supreme court of the State of Iowa, and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court be, and the same is hereby, affirmed, with costs.

"7th February, 1870.

"True copy. Test.

[SEAL.]

"D. W. MIDDLETON,
"*Clerk of the Supreme Court.*"

And at the same time pl'ff offered the authenticated copy of the opinion of the Supreme Court of the United States in the case of the B. & M. R. R. Co., pl'ff in error, vs. Mills County, Iowa, as follows:

"Supreme Court of the United States. No. 39. December term, 1869.

"THE BURLINGTON & MISSOURI RIVER RAILroad Co., pl'ff in error,
"*vs.*
"MILLS COUNTY.

"In error to the supreme court of the State of Iowa.

"Mr. Justice Nelson delivered the opinion of the court.

"This is a writ of error to the supreme court of the State of Iowa. The pleadings and proofs present the same questions involved in the case of the pl'ffs against Fremont County, and must be disposed of in the same way. The decree of the court below is affirmed.

"True copy. Test.

[L. S.]

"D. W. MIDDLETON,
"*Clerk Supreme Court United States.*"

And at the same time pl'ff offered authenticated copy of the judgment of said court in same cause, as follows:

"No. 39. Supreme Court of the United States. December term, 1869. The B. & M. R. R. Co. *vs.* pl'ff in error, Mills County, Iowa. In error to the supreme court of the State of Iowa.

"This cause came on to be heard on the transcript of the record from the supreme court of the State of Iowa, and was argued by counsel. On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

"7th February, 1870.

"True copy. Test.

[SEAL.]

"D. W. MIDDLETON,
"*Clerk of Supreme Court of U. S.*"

108 XXI. T. P. BALLARD, a witness, being sworn, said:

I published the Glenwood Opinion in Mills County, in the year 1871; it was a weekly paper; the proposition for a contract and the resolutions of the board were published 4 weeks before the election. I furnish herewith a copy of the publication (Transcript, p. 658. See Abstract, p. 21, for copy of publication).

XXII. Pl'ff next offered the deposition of C. E. PERKINS, who testified as follows:

Have been a director in B. & M. R. R. Co. since some time prior to consolidation with C., B. & Q. R. R. Co. till the present time; am also a director of the C., B. & Q. R. R. Co., and have been since the spring of 1875; Alpheus Hardy, L. Tuckerman, J. A. Barnham, J. W. Brooks, J. M. Forbes, N. Thayer, and R. S. Watson, and I think J. F. Joy, are also directors; the names of the directors of the last-named company on December 31st, 1872, were Erastus Corning, J. C. Green, S. Bartlett, J. W. Brooks, J. A. Barnham, J. N. Dennison, J. M. Forbes, N. Thayer, R. S. Watson, J. F. Joy, C. F. Colton, and J. M. Walker; where the same

name appears as a director in both companies it is in each case the same person; there were nine directors in the first compa'y and twelve in the last.

XXIII. D. M. WHITFIELD recalled, said (Transcript, p. 655): I was a member of the board of supervisors of Mills County in the year 1871.

Q. (By Mr. SOLOMON.) State whether or not there was a demand made of the board of supervisors in the year 1871 by any person on behalf of B. & M. R. R. Co. for the $10,000 that they claimed under the supposed proposition for the contract that is in controversy here.

A. Yes; there was, I think.

Q. At what session was that made.

A. I think it was at the June session.

(Counsel for def't objects to this evidence as immaterial.)

Mr. SOLOMON, attorney for pl'ff, stated: We expect to show that a demand was made and that what was said between the officer repre-
109 senting the company and the board at that time was what led to the submission of the contract. We propose to connect that with the submission, to show how it came about.

The objection was sustained by the court, to which ruling the pl'ff at the time excepted.

XXIV. JOSIAH WEARIN, being sworn, said (Transcript, p. 667):

In 1871 I paid to D. N. Smith, agent of B. & M. R. R. Co., $500 on account of swamp lands, to wit, SW. ¼ 13, 72, 41; N. ½ NE. ¼ and SW. NE. 23, 72, 41; afterwards I got a deed for this land from the county, but paid no money to the county; I have the deed here, also; and got *and* a quitclaim from the company, of said land, dated February 6th, 1871, to which was appended a release of the land by John M. Forbes and Henry P. Kidder, trustees.

XXV. J. M. POWELL, recalled, said (Transcript, 675) that he made out Exhibit M to the petition from the original receipts on file in the auditor's office, but that he is now unable to find numbers 14 and 15 in said exhibit, but knows the recitals in said exhibit to be true. (Abstract, p. 26.)

XXVI. E. C. BOSBYSHELL recalled (Transcript, 678), and identified certain papers as the subscriptions guaranteeing right of way, signed by a large number of persons, after return of committee from Burlington in 1868; and at this point pl'ff offered the papers so identified as evidence, as a part of the testimony showing the action of the people at that time, to which offer def'ts objected as immaterial, irrelevant, and incompetent, and thereupon Mr. Solomon, attorney for pl'ff, stated that he proposed to follow the introduction of these papers and show the court that they were signed rapidly and in a hurry, and because it was supposed that they were essential to the getting of the road. The objection was sustained by the court, and to this ruling the pl'ff at the time excepted.

XXVII. Pl'ff next offers in evidence (Transcript, 681) certified copies of the deeds corresponding with Exhibits C, D, E, F, and G, to the petition. (See pp. 15 to 20 this Abstract for copies of said deeds.)

110 XXVIII. A. J. RUSSELL, being sworn, said (Transcript, 681):

I have resided in Mills County twenty years; I am a merchant; was a member of the board of supervisors in 1868, when the proposition between the county and the B. & M. R. R. Co. was acted upon; there was at that time some doubt and concern as to whether the railroad would build centrally through Mills County via Glenwood or not, and this had, to a certain extent, an influence inducing the making of that proposition; there were other reasons with it; can't tell what caused the feeling of alarm that existed at the time; it was generally the conversation; I don't know as there was any particular reason only to have the road; there was talk of the road going to Council Bluffs, and talk of its going to Nebraska City; it was not definitely settled where it would go; this feeling existed at the time the committee was appointed to go to Burlington—this feeling of alarm existed at that time; there was doubt, just the same, no further. That this was to settle the thing permanently in regard to where the road was to go, and settle the titles to the land, was my understanding of it, and the people were after us to get it fixed; this state of feeling existed from the time the committee was appointed until the proposition was accepted.

Q. (By Mr. SOLOMON.) Do you remember anything that was said by members of the committee on their return from Burlington in regard to what it would be necessary to do to secure the road—what was said to you in your official capacity?

(Objected to by def'ts as incompetent and immaterial. Objection sustained by the court, to which ruling the pl'ff at the time excepted.)

Q. I will read a portion of this proposition to you and then ask you a question in regard to it. "It is also further understood that the foregoing proposition shall not be binding upon the county of Mills unless said railroad company shall complete said road through Mills County via Glenwood, and build a depot at Glenwood, in said county; and in case said railroad company shall fail or neglect to build said railroad through Mills County via Glenwood, and also to build and establish a depot at Glenwood, in said county, then and in that event the said lawsuit shall
111 stand for final hearing in the Supreme Court of the United States the same as if this proposition had never been made." Now I will ask you whether you would have been willing to adopt this proposition without that clause or something equivalent?

(Objected to by def'ts as incompetent and immaterial. Objection sustained by the court, to which ruling pl'ff at the time excepted.)

Cross-examination:

No act of the railroad influenced me as member of the board; there was anxiety, every one was feeling an interest in it; I could not say that this anxiety was not created by any act of the railroad company; I don't know of any act any more than the disposition of the people to believe that the railroad company did not intend to run the road here unless there was some act to induce it; I don't know of any specific act done by the railroad company; there was a fear among the people that they might lose the road. After the committee was appointed and authorized to submit this proposition, we, as members of the board, felt relief from the constant importunities of the people who held these lands under the county

for some action to be taken to quiet the title to these lands; of my own knowledge I knew of no lines having been run other than the original line of 1856; had heard of such other lines being run at the time of the acceptance of this proposition, in November, 1868; from reports there had been several surveys; I don't know that these influenced my action as a member of the board.

Redirect examination:

It was known to myself and other members of the board that Mr. Hale and Mr. Ewing had prosecuted the case successfully through the State courts; I can't say that that fact imparted confidence in my mind or that of my fellow members; of course we thought we had a pretty good case, but from what attorneys of our town had told us we did not feel sanguine; attorneys here, different attorneys, said there was a question that we might win the suit and might lose it, although we had been successful thus far; our success up to that time did impart confidence to a cer-
112 tain extent; we considered that the chances were in our favor, but that the decision might be reversed; I knew at the time that the railroad company had originally established their road through Mills County via Glenwood; the report that they were contemplating the construction of the road elsewhere, and the fear induced thereby that we would lose the road, had a great deal to do in bringing about this contract or arrangement; the proposition lay from June till November, when the report was brought in and accepted by the board.

Recross-examination:

I don't know that these reports were brought about by the railroad company; there were reports at that time—June, 1868—but who brought them about is a question I can't answer; I don't know who started them, or where they originated; these reports influenced my mind, whether the railroad company did it or not; this was in June, the same time the proposition was made, which was to make sure of the road for one object and to quiet the title for another; the proposition was made by Mills County, and it was left for the railroad company to say whether it would accept or not.

XXVIII. W. G. SUMMERS, being sworn, said (Transcript, 696):

I have lived in Mills County nineteen years; was member of board of supervisors in 1868–'9, and at time committee was sent to Burlington; the object of the committee was, if I understand the thing right, to get the railroad to this point, Glenwood, and to settle an old lawsuit; the original survey was made before I came here; this survey ran centrally through Mills County and struck Glenwood; when I came to the county it was the understanding throughout this county that the road was to strike Glenwood, the county-seat. This expectation continued until about the time that the proposition for a contract was gotten up; at the time the committee was appointed there was considerable fear in the minds of the members of the board that the road would not be built centrally through Mills County via Glenwood; there was strong talk of the road running to Nebraska City, and some little talk of its running to Council Bluffs,
113 but during our session of the board of supervisors Nebraska City was most talked of; surveys had been talked of both north and

south; there was talk by a good many that either of these surveys were easier built than the original survey; I mean to say that there was alarm existing, and that it was these surveys and other matters which caused it to be a matter of doubt that the road would be built on the original line; this alarm and feeling was general among the members of the board; it was one of the topics of the day, with other things; this inducement which the board had in offering to devote these lands in that proposition was to secure the railroad centrally through Mills County; that was my idea; had not the latter clause of that contract been thrown in it would not have voted it; by the latter clause I mean that part providing for railroad via Glenwood; if this had been left out I don't think they would have got the contract; it was a leading consideration in making the proposition to secure the road.

Cross-examination:

I suppose the board had the power to appoint the committee or not; the proposition was the voluntary act of the county; I know of no act that the railroad did directly to bring it about; the county had sold some of the swamp lands, and it was one of the considerations in the minds of the board to make certain these titles; I can say that the people I talked with from our part of the county were opposed to a compromise; I don't know that a similar proposition was made in 1866, and I don't remember of the reading of such a proposition before the board in 1868; it might have been done, but I do not remember it.

XXIX. FIELDEN UTTENBACH, being sworn, said (Transcript, 708):

I have lived in Mills County twenty years; there was one route surveyed running not far from Glenwood, near where the line now runs; this was an early survey; I was a member of the board of supervisors in 1868, and when the proposition for a contract was made there was much said about where the road should run; they did not know where it would go—they wanted to get it right through Glenwood; the company were running two or three different routes, as I understood it, running routes one place and another, but the citizens wanted it through Glen-
114 wood. At the time this committee was appointed we were anxious to have the road come through the central portion of the county; I know I was; I did not know where it would go; there was some doubt about it some way; this was when they were anxious to locate the road somewhere.

Cross-examination:

Right smart of the while I was on the board there was quite a chat about where the road would be; I don't know how the community felt, but I thought that every man in the county thought that we ought to have a railroad through the county-seat, or through the center of the county; I don't know of any act the company did to influence the appointment of the committee; I remember that a good many people were before the board wanting titles and wanting lands—could not tell how many or who; the whole board acted under the advice of an attorney all the time; we got the best information; we had an attorney to advise all the time, clear through; at the time the proposition was made we had a suit in United States court; what influenced me in my action was this: Our land was held

and we could not have it settled; we wanted it to come in for taxes; I did not care who owned it; I thought it would be to our advantage to increase the taxes.

Redirect examination:

I don't say that this (the settlement and taxing of the land) was the whole inducement; the way I understood it was that the citizens wanted the railroad through here, and in settling it there was all the while a proviso that this should be a point; this was one of the inducements; I thought that the nearer the center of the county we got the road the better it would be for the county; that is what they all thought, so far as I heard them express themselves.

Recross-examination:

When I make a settlement I am willing to deal fair and make the best terms I can; I can't say that I would have favored the settlement without the provision for the road in it; it is doubtful whether I would, because I thought we were doing fair enough anyhow.

115 XXX. SAMUEL ALLIS, being sworn, said (Transcript, 728): I have lived in Mills County twenty-one years; lived here when the route of the B. & M. R. R. was located through the center of the county; I was a member of the board in 1868, at the time the committee was appointed to go to Burlington, and afterwards during that year; I don't know particularly what caused the appointment of this committee; some persons who had purchased railroad lands had considerable anxiety, and they wished the board to make some arrangements whereby these citizens would be satisfied, and the people of the county generally benefitted; I remember of different surveys being made north and south, but you could not tell which of these routes they intended to run; I presume there was doubt at time committee was appointed as to where road would run; I recollect some saying if we did not use our influence the railroad company might run around us and leave Mills County in the cold; there might have been alarm in the public mind, and in the mind of the board, on that subject—I presume there was; our object in sending the committee was to get the road centrally through the county; the people seemed unsettled in their minds, and in doubt where the road would run, and they wanted an understanding in some way, and settlement made, and we appointed the committee to confer with the railroad company and make some arrangements.

Cross-examination:

One of the principal reasons for making the proposition to the railroad company was to prevent loss of lands; the proposition was made, I think, independent of any act of the railroad company.

XXXI. Pl'ff next read in evidence the letter of the acting Commissioner of the General Land Office, dated Aug. 20th, 1856, to the secretary of state of Iowa, to be read in connection with the plat of the location of the route filed March 27th, 1857, and as explanatory of the reason that led to the filing of that plat (Transcript, pp. 735 and 800):

116 GENERAL LAND OFFICE, *August 20th*, 1856.

GEORGE W. MCCLEARY,

Secretary of the State of Iowa, at Iowa City:

SIR: I have the honor to acknowledge the receipt of your communication of the 12th inst., enclosing a certified copy of the act of the State legislature, approved on the 14th of July, 1856, to accept the grant, and to carry into execution the trust conferred upon the State of Iowa by the act of Congress making the grant of lands for railroads, approved May 15th, 1856, which has been placed on the regular files in this office. It is observed that the 6th section of the law directs that it shall be the duty of the governor, after fixing his official signature, to file such map in the department having control of the public lands in Washington, *such location being considered final only so far as to fix the limit and boundary within which lands may be selected.* The part which I have italicised appears to me to conflict directly with the act of Congress which contemplates that the route shall be "definitely fixed," and it is proper that I should through you, in this early stage of the business, call the attention of the State executive and the companies to the matter, and announce the opinion of this office so far as to prevent unnecessary delay. A route merely for fixing the limits of the grant will not be acted upon; it must be something real and fixed, the grant cannot be in one place and the actual route in another; although slight variations of the line, such as are unavoidable in the progress of construction of such works would be admissible, any material changes of the route would be considered acting in bad faith with the United States, and cannot be tolerated, for such would be a clear violation of the law which proposes an indemnity to the United States for the lands granted away by the enhanced value of the alternate sections remaining to the government near the route of the road. The route of the road must therefore be first definitely fixed as required by the law of Congress or no title vests.

In the above view it is expected that the certificate of the governor on the maps returned to this department will set forth that such maps delineate the routes as "definitely fixed," that is, as final locations, before they can receive our action.

I am, very respectfully, your obedient servant,

JOS. S. WILSON,
Acting Commissioner.

Plaintiff rests in chief.

117 *Defendants' evidence.*

After pl'ffs had rested in chief, the def'ts, subject to objections made at the taking and the further written objections filed after the taking and before the trial, which latter objections are annexed to the original depositions in each case, introduced the depositions of the following persons, to wit: C. W. Spalding, C. E. Perkins, W. W. Peet, A. E. Touzalin, J. M. Walker, Henry Strong, H. A. Copeland, D. N. Smith, David Rorer, J. M. Forbes, W. H. Taft, H. C. Watkins, B. F. Buffington, Bennett Creech it being expressly agreed between the parties in open court, at

and during the trial, that the court was to consider and rule on said objections on the final hearing, and to indicate such ruling by indorsement thereon.

I. Deposition of C. W. SPAULDING (Transcript, 906):

I am now secretary of the land department of the C., B. & Q. R. R. Co.; was formerly secretary of the B. & M. R. R. Co. land department; I was local agent of the B. & M. R. R. Co. at Glenwood, in 1870; I prepared the company's tax lists for 1870–'1–'2–'3; J. M. King superintended the payment of the taxes for 1870, and I superintended the payments for the other years.

Q. 5. Have you lists of land on which the B. & M. R. R. Co. paid taxes for either or all of those years? If you have, produce the same, that it may be attached to your deposition as an exhibit.

(To this question pl'ff, at the taking, objected as incompetent, and on the trial pl'ff objected to question and answer as incompetent, and because the tax receipts therein referred to were not the act of the pl'ff or of any agent who had power to bind the pl'ff in the premises.

No ruling announced by the district court.)

A. 5. I have for each of these years, 1870–'1–'2–'3, and here annex the same as Exhibit A.

Q. 7. To whom was the tax money paid?

(Same objection as to No. 5. No ruling.)

A. To C. B. Atkins, treasurer of Mills County.

118 Q. 12. What does this list, Exhibit A, show?

(Same objection as to No. 5. No ruling.)

A. It is a list of the lands in controversy, showing the section, township, range, acres, taxes paid for 1870, amount and date; taxes paid for 1871, amount and date; taxes paid for 1872, amount and date, and taxes paid for 1873, amount and date; it shows the amount for each of those years, 1870–'1–'2–'3, and the grand total for those years, amounting to $4,125.36; for 1870, $912.04; for 1871, $1,230.65; for 1872, $1,063.20; for 1873, $919.47. It also contains 160 acres, described as follows: W. ½ of SE. sec. 7, Tp. 72, R. 40, and W. ½ of SW. ¼ sec. 1, Tp. 71, R. 43, which were by mistake included in the deeds by Mills Co. to the railroad co., but which belonged to the clear list, and not in controversy. Exhibit A was made by me and compared with the original tax receipts and is correct.

Q. 14. Examine Exhibit A to answer of C., B. & Q. R. R. Co., and state what it is, and whether it is correct.

(To which p'ff, at the taking and on the hearing, objected for incompetency, irrelevancy, and immateriality. No ruling.)

A. It is a correct list of the lands sold by the B. & M. R. R. Co. prior to December 31st, 1872.

Q. 15. Examine Exhibit B to answer of C., B. & Q. and state what it is, and whether or not it is correct.

(Same objections as to No. 14. No ruling.)

A. It is a correct list of the lands in controversy, which have been sold by the B. & M. R. R. Co. since December 31st, 1872, and warranted. The railroad company conveyed certain lands to Mills County.

Q. 17. Have you a list of the lands so sold (to Mills County); if so, produce the same that it may be attached as an exhibit?

(Same objection as to No. 14. No ruling.)

A. I have; which I attach as Exhibit B.

Q. 18. Why were these lands so deeded to Mills County?

(Same objection as to No. 14. No ruling.)

A. In pursuance of the compromise of 1868, and in consideration of other deeds made by Mills County to the railroad company.

119 Q. 20. You speak of a compromise of 1868; what compromise was that?

(Same objection as to No. 14. No ruling.)

A. Between the B. & M. R. R. Co. and the county of Mills. It was the compromise of a lawsuit, instituted by Mills County vs. B. & M. R. R. Co. to recover of the railroad company the swamp lands in Mills County. I have seen the contract by which the suit was compromised. Exhibit C to answer of C., B. & Q. R. R. Co. is a correct copy thereof. When blanks occur in Exhibit A to this deposition the taxes are paid by the parties to whom we sold.

Q. 24. Take this paper (here the witness is handed the paper marked Exhibit C to this deposition) and state what it is.

(Same objection as to No. 14. No ruling.)

A. It is a list of lands which were deeded to individuals holding some claims thereon from Mills County, in pursuance of the compromise 1868, by the railroad company, Denison or Russell; I make it a part of my deposition; Denison held tax deeds and Russell tax certificates, all controlled by railroad company, and deeds were made in pursuance of an agreement between railroad company and agent of the county, and the consideration received by the railroad company was a return of principal tax paid, with 10 per cent. interest and 5 per cent. penalty.

Q. 29. Examine this list (Exhibit D to this deposition) and state what it is.

(Same objections as to No. 14. No ruling.)

A. It is a list of lands which had been sold by Mills County prior to the compromise, and upon which the purchasers paid the purchase money to the railroad company in compliance with the contract. These lands were conveyed by the railroad company to Mills County, and are included in Exhibit B to this deposition; the lands were ascertained by Wm. Hale and H. C. Watkins, a committee of the board, and D. N. Smith and H. A. Copeland, agents of the railroad company; and these lands described in Exhibit D were deeded to Mills County for the benefit of bona fide pre-emptors.

120 Q. 34. Examine this list (Exhibit E attached hereto) and state what it contains.

(Same objections as to No. 14. No ruling.)

A. It contains a list of lands in controversy on which Denison held tax deeds or Russell tax certificates, which have been quitclaimed to persons claiming them under Mills County, in pursuance of the compromise.

Cross-examination:

I know from an examination of the duplicate contracts on file that the lands in Exhibit B to the answer to the C., B. & Q. R. R. Co. have been sold. I have annexed an exhibit marked F, showing that list in full, giving the date of sale, description of land sold, the amount of the contract price for each sale, the party to whom the sale was made, the amount

of money paid down and received by the railroad company, the terms of payment for the balance in each case, and how much has been paid to date; I know that the matters set forth in Exhibit A to answer of C., B. & Q. R. R. Co. are correct, from an examination of duplicate contracts on file in this office; I attach as Exhibit G a list of the lands which were so sold prior to Dec. 31, 1872, showing the date of sale of each tract, a description of the land sold, the party to whom sold, the purchase money or contract price, the amount paid down, the terms of payment for the balance, and the amount already paid; the duplicate contracts above referred to were of the same general character, but of different dates, and obligated the company to convey on payment of purchase price; I do not mean to be understood as swearing in answers in chief that the compromise of the lawsuit was the only object of the contract spoken of; that was not the only object; as I understood it, it was to secure a railroad through Mills County via Glenwood; also, I know that said contract provided specially that in case said railroad company should fail to build its road through Mills County via Glenwood, and also build and establish a depot at Glenwood, then and in that event the lawsuit should stand for final hearing in the supreme court the same as if that contract had not been made, and I do not mean to be understood
121 as swearing that the object of the contract was anything other than was expressed by its terms; I have annexed as Exhibit J a true copy of the contract to which I refer. (For this copy see Ab., 21–'3.) Exhibit L, hereto annexed, shows the swamp selections quitclaimed by the B. & M. R. R. Co. in pursuance with the compromise*d* for the preemptors or purchasers on which the B. & M. R. R. Co. received the purchase money.

Redirect examination:

Exhibit M, hereto annexed, is a list of swamp selections in controversy on which the B. & M. R. R. Co. hold tax titles or certificate of tax sale.

EXHIBIT A.

***Statement** showing taxes paid by the B. & M. on lands embraced in suit with Mills County, entitled Mills County vs. B. & M. R. R. Co. and C., B. & Q. R. R. Co. et al.*

Part of section.	S.	T.	R.	Acres.	Taxes paid for 1870.		Taxes paid for 1871.		Taxes paid for 1872.		Taxes paid for 1873.	
					Am't.	Date.	Am't.	Date.	Am't.	Date.	Am't.	Date.
NE. NE.	5	72	40	26.44	$2 11	Feb. 24, '71	$3 85	Sept. 30, '72				
NW. NE.	"	"	"	26.68			3 85	"				
SW. NE.	"	"	"	40			5 91	"				
NE. NW.	"	"	"	26.80	2 16	Feb. 24, '71	3 04	Feb. 29, '72	$3 10	Feb. 22, '73		
SE. NW.	"	"	"	40	3 80	"	5 10	J. N. D. "	4 59	"		
SW. SW.	"	"	"	"	3 80	"	5 10	J. N. D. "	4 60	"	$2 96	Feb. 16, '74
NE. SW.	6	"	"	"	3 80	"	5 10	"	4 60	"	2 96	"
NW. SW.	"	"	"	37.04	3 80	"	4 71	"	4 26	"	2 74	"
SW. SW.	"	"	"	37.04	3 80	"	4 85	"	4 38	"	2 70	"
SE. SW.	"	"	"	40	3 80	"	5 10	"	4 60	"	2 96	"
SW. SE.	"	"	"	"	3 20	"	5 10	"	4 37	"	2 96	"
SE. SE.	"	"	"	"	3 20	"	5 10	"	4 37	"	2 96	"
NE. NE.	7	"	"	"								
NE. NW.	"	"	"	"	3 20	Feb. 24, '71	Deeded	April 12, '71	Deeded		Deeded	
NW. NW.	"	"	"	38.52	3 20	"	"	"	"		"	
SW. NW.	"	"	"	39.09	3 12	"	4 97	Feb. 29, '72	4 50	Feb. 22	2 88	Feb. 16, '73.
SE. NW.	"	"	"	40	3 20	"	5 10	"	4 60	"	2 96	"
NW. SW.	"	"	"	39.85	3 20	"	Deeded	April 12, '71	Deeded	"	Deeded	
SW. SW.	"	"	"	40.62	3 20	"	"	"	"	"	"	
NE. SE.	"	"	"	40	3 20	"	5 10	Feb. 29, '72	4 60	Feb. 22, '73	2 96	Feb. 16, '74.
SE. SE.	"	"	"	"	3 20	"	5 10	"	4 60	"	2 96	"
NE. SW.	8	"	"	"	3 20	"	5 10	"	4 60	"	2 96	"
NW. SW.	"	"	"	"	3 20	"	5 10	"	4 60	"	2 96	"
SW. SW.	"	"	"	"	3 20	"	5 10	"	4 60	"	2 96	"
SE. SW.	"	"	"	"	3 20	"	5 10	"	4 60	"	2 96	"
NE. NE.	17	"	"	"	3 80	"	5 10	"				
123 SE. NE.	17	72	40	40	$3 80	Feb. 24, '71	$5 10	Feb. 29, '72				
NE. NE.	18	"	"	"	3 20	"	5 10	"	$4 60	Feb. 22, '73	$2 96	Feb. 16, '74.
NW. NE.	"	"	"	"	3 20	"	5 10	"	4 60	"	2 96	"
SW. NE.	"	"	"	"	3 20	"	5 10	"	4 60	"	2 96	"
SE. NE.	"	"	"	"	3 20	"	5 10	"	4 60	"	2 96	"
NE. SE.	"	"	"	"	3 20	Feb. 24, '74	5 10	"	4 60	Feb. 22, '73	2 96	Feb. 16, '74.
NW. SE.	"	"	"	"	3 20	"	5 10	"	4 60	"	2 96	"
SW. SE.	"	"	"	"	3 20	"	5 10	"	4 60	"	2 96	"
SE. SE.	"	"	"	"	3 20	"	5 10	"	4 60	"	2 96	"
NE. NE.	19	"	"	"	3 20	"	5 10	"	4 60	"	2 96	"
NW. NE.	"	"	"	"	3 20	"	5 10	"	4 60	"	2 96	"

EXHIBIT A—Continued.

Part of section.	S.	T.	R.	Acres.	Taxes paid for 1870.		Taxes paid for 1871.		Taxes paid for 1872.		Taxes paid for 1873.	
					Am't.	Date.	Am't.	Date.	Am't.	Date.	Am't.	Date.
Hastings town plat. NE. NW	"	"	"	"	3 20	"	10 20	"	9 20	"	82 12	Feb. 21, '74. Paid as town lots.
NW. NW	"	"	"	41. 09	3 28	"	10 20	"	9 20	"		
SW. NW	"	"	"	40. 84	3 28	"	10 20	"	8 86	"		
SE. NW	"	"	"	40	3 20	"	10 20	"	8 86	"		
NE. NE	4	73	"	35. 94	2 49	Feb. 24, '71	5 05	"	4 68	Sept. 30, '73		
SE. NE	"	"	"	40	2 76	"	5 40	"	4 68	"		
NE. SE	"	"	"	"	2 76	"						
NW. SE	"	"	"	"	2 76	"						
SW. SE	"	"	"	"	2 76	"						
SE. SE	"	"	"	"	2 76	"						
NW. NE	9	"	"	"	2 76	"	4 40	Feb. 29, '72	4 84	Sept. 30, '73		
SW. NE	"	"	"	"	2 76	"	4 40	"	4 84	"		
NE. SW	"	"	"	"	3 12	"	8 80	"	5 28	Feb. 26, '73	4 40	Feb. 16, '74.
NW. SW	"	"	"	"	3 12	"	8 80	"	5 28	"	4 40	"
SW. SW	"	"	"	"	3 12	"	8 80	"	5 28	"	4 40	"
SE. SW	"	"	"	"	3 12	"	8 80	"	5 28	"	4 40	"
NE. NW	10	"	"	"	3 66	"	5 91	Sept. 30, '72	5 04	Sept. 30, '73	4 23	March 13, '74.
NW. NW	"	"	"	"	3 66	"	5 91	"	5 04	"	3 40	"
124 SW. NW	10	73	40	40	$3 66	Feb. 24, '71	$5 91	Sept. 30, '72	$5 04	Sept. 30, '73	$3 40	March 13, '74
SE. NW	"	"	"	"	3 66	"	5 91	"	5 04	"	4 24	"
NW. SW	14	"	"	"								
SW. SW	"	"	"	"								
NW. SE	17	"	"	"	2 76	Feb. 24, '71	4 70	Feb. 29, '72	2 80	Feb. 26, '73	3 36	Feb. 16, '74.
SE. NE	20	"	"	"					Deeded	Sept. 14, '72	Deeded	
NE. SE	"	"	"	"					"	"	"	
SE. SE	"	"	"	"					"	"	"	
NE. NE	21	"	"	"	4 02	Feb. 24, '71	8 16	Feb. 29, '72	3 50	Feb. 26, '73		
NW. NE	"	"	"	"	4 02	"	8 16	"	3 50	"		
SW. NE	"	"	"	"	4 02	"	8 16	"	3 50	"		
SE. NE	"	"	"	"	4 02	"	8 16	"	3 50	"		
SW. SW	"	"	"	"	3 66	"	4 08	"	2 80	"	3 36	Feb. 16, '74.
SE. SW	"	"	"	"	3 66	"	4 08	"	2 80	"	3 36	"
NE. SE	"	"	"	"	3 66	"	8 16	"	3 50	Feb. 27, '73		
NW. SE	"	"	"	"	3 66	"	8 16	"	3 50	"		
SW. SE	"	"	"	"	3 66	"	8 16	"	3 50	"	3 36	Feb. 16, '74
SE. SE	"	"	"	"	3 66	"	8 16	"	3 50	"	3 36	"
SW. SW	22	"	"	"	3 66	"	8 16	"	4 00	"	4 80	Sept 30, '74.
NW. SE	"	"	"	"	4 26	"	5 10	"	4 00	"	4 20	Feb. 16, '74.
NE. NE	28	"	"	"	3 66	"	4 08	"	2 80	"	3 36	"

NW. NE	"	"	"	"	3 66	"	..	4 08	"	..	2 80	"	..	3 36	"
SW. NE	"	"	"	"	3 66	"	..	4 08	"	..	2 80	"	..	3 36	"
SE. NE	"	"	"	"	3 66	"	..	4 08	"	..	2 80	"	..	3 36	"
NE. NW	"	"	"	"	3 66	"	..	4 08	"	..	2 80	"	..	4 20	"
NW. NW	"	"	"	"	3 66	"	..	4 08	"	..	2 80	"	..	4 20	"
SW. NW	"	"	"	"	3 66	"	..	4 08	"	..	2 80	"	..	4 20	"
SE. NW	"	"	"	"	3 66	"	..	4 08	"	..	2 80	"	..	4 20	"
NE. SW	"	"	"	"	3 66	"	..	4 08	"	..	2 80	"	..	3 36	"
125 NW. SW	28	73	40	40	$3 66	Feb. 24, '71	..	$4 08	Feb. 29, '72	..	$2 80	Feb. 27, '73	..	$3 36	Feb. 16, '74.
NW. SE	"	"	"	"	3 66	"	..	4 08	"	..	2 80	"	..	.....	.....
SW. SE	"	"	"	"	3 66	"	..	4 08	"	..	2 80	"	..	.....	.....
NE. NE	29	"	"	"	2 76	"	..	3 76	"	..	2 80	"	..	3 36	Feb. 16, '74.
SW. NE	"	"	"	"	2 76	"	..	3 76	"	..	2 80	"	..	3 36	"
SE. NE	"	"	"	"	2 76	"	..	3 76	"	..	2 80	"	..	3 36	"
SE. NW	"	"	"	"	3 12	"	..	4 70	"	..	3 50	"	..	3 36	"
NE. SW	"	"	"	"	2 76	"	..	4 70	"	..	3 50	"	..	3 36	"
SE. SW	"	"	"	"	2 76	"	..	4 70	"	..	3 50	"	..	3 36	"
NE. SE	"	"	"	"	2 76	"	..	3 76	"	..	2 80	"	..	3 36	"
NW. SE	"	"	"	"	2 76	"	..	3 76	"	..	2 80	"	..	3 36	"
SW. SE	"	"	"	"	2 76	"	..	3 76	"	..	2 80	"	..	3 36	"
SE. SE	"	"	"	"	2 76	"	..	3 76	"	..	2 80	"	..	3 36	"
NE. NE	31	"	"	"	3 12	"	..	4 70	"	..	3 50	"	..	3 36	"
NW. NE	"	"	"	"	3 12	"	..	4 70	"	..	3 50	"	..	3 36	"
SW. NE	"	"	"	"	3 12	"	..	4 70	"	..	3 50	"	..	3 36	"
SW. NW	"	"	"	"	2 73	"	..	4 10	"	..	3 07	"	..	2 94	"
SE. NW	"	"	"	"	3 12	"	..	4 70	"	..	3 50	"	..	3 36	"
W. h. SW. NE	2	71	41	20	81	"	..	2 55	"	..	2 64	Feb. 28, '73	..	2 38	"
SW. SW	"	"	"	40	1 62	"	..	5 08	"	..	6 00	"	..	4 76	"
SW. SE	9	"	"	"	3 42	"	..	6 24	"	..	6 60	"	..	4 76	Feb. 17, '74.
SE. SE	"	"	"	"	3 42	"	..	6 24	"	..	6 60	"	..	4 76	"
SW. SW	10	"	"	"	2 64	"	..	5 33	"	..	6 60	"	..	.....	.....
NE. NW	11	"	"	"	1 62	"	..	4 96	"	..	6 00	"	..	4 76	Feb. 17, '74.
NW. NW	"	"	"	"	1 62	"	..	5 33	"	..	6 00	"	..	4 76	"
SE. NW	"	"	"	"	Deeded.	March 19, '64		Deeded.	.....	.....	Deeded.	.....	.....	Deeded.	.....
NW. NW	15	"	"	"	1 62	Feb. 24, '71	..	5 33	Feb. 29, '72	..	6 60	Feb. 28, '73	..	4 76	Feb. 17, '74.
SW. NW	"	"	"	"	1 62	"	..	5 33	"	..	6 60	"	..	4 76	"
SE. SW	"	"	"	"	1 98	"	..	5 33	H.S. R.	..	6 41	August 14, '73	..	.....	.....
126 NW. SE	15	71	41	40	$1 98	Feb. 24, '71	..	$5 33	H.S. R.	..	$9 42	August 25, '73	..	.....	.....
SW. SE	"	"	"	"	1 98	"	..	5 33	H.S. R.	..	9 42	"	..	.....	.....
NW. NE	28	"	"	"	1 62	"	..	5 04	"	..	5 04	Feb. 28, '73	..	$4 76	Feb. 17, '74.
SW. NE	"	"	"	"	1 62	"	..	5 04	"	..	5 04	"	..	4 76	"
SE. NW	"	"	"	"	3 42	"	..	6 84	"	..	5 04	"	..	8 00	"
NW. SW	"	"	"	"	Not taxed	.....		6 84	"	..	5 04	"	..	8 00	"
SW. SW	"	"	"	"	"	"		6 84	"	..	5 04	"	..	8 00	"
NE. SW	29	"	"	"	3 42	Feb. 24, '71	..	6 84	"	..	5 04	"	..	8 00	"
SE. SW	"	"	"	"	3 78	"	..	6 84	"	..	5 04	"	..	6 80	"
NW. SE	"	"	"	"	3 78	"	..	6 84	"	..	5 04	"	..	8 00	"
SW. SE	"	"	"	"	3 78	"	..	6 84	"	..	5 04	"	..	8 00	"
SE. SE	31	"	"	"	3 42	"	..	.....	.....	.....	.....	.....	.....	.....	.....
SE. NE	32	"	"	"	3 42	"	..	6 84	Feb. 29, '72	..	5 04	Feb. 28, '73	..	8 00	Feb. 17, '74.
NE. SW	"	"	"	"	3 42	"	..	.....	.....	.....	.....	.....	.....	9 50	Sept. 30, '74.
NW. SW	"	"	"	"	3 42	"	..	.....	.....	.....	.....	.....	.....	12 24	"

EXHIBIT A—Continued.

Part of section.	S.	T.	R.	Acres.	Taxes paid for 1870.		Taxes paid for 1871.		Taxes paid for 1872.		Taxes paid for 1873.	
					Am't.	Date.	Am't.	Date.	Am't.	Date.	Am't.	Date.
SW. SW	"	"	"	"	3 42	"					25 50	"
SE. SW	"	"	"	"	3 42	"					9 50	"
NE. SE	"	"	"	"	3 42	"					7 60	"
NW. SE	"	"	"	"	3 42	"					7 60	"
SW. SE	"	"	"	"	3 42	"					7 60	"
SE. SE	"	"	"	"	3 42	"					7 60	"
NE. NE	33	"	"	"	1 98	"			Deeded.	Dec. 14, '71	Deeded.	
SE. NE	"	"	"	"	1 98	"			"	"		
NE. SW	"	"	"	"	3 42	"	5 70	Feb. 29, '72	4 20	Feb. 28, '73	9 06	Sept. 30, '74.
NW. SW	"	"	"	"	3 42	"			Deeded.	April 22, '72	Deeded.	
SW. SW	"	"	"	"	3 42	"	5 70	Feb. 29, '72	4 20	Feb. 28, '73		
SE. SW	"	"	"	"	3 42	"	5 70	"	4 20	"	9 06	Sept. 30, '74.
NE. SE	"	"	"	"	1 62	"						
SE. SE	"	"	"	"	1 62	"						
127 NE. SW	13	72	41	40	$3 84	Feb. 24, '71	Deeded.	Jan. 30, '71	Deeded.		Deeded.	
NW. SW	"	"	"	"	3 84	"	"	"	"		"	
SW. SW	"	"	"	"	3 84	"	"	"	"		"	
SE. SW	"	"	"	"	3 84	"	"	"	"		"	
NW. SE	"	"	"	"	3 80	"	$4 50	Feb. 29, '72	$3 00	Feb. 28, '73	$2 00	Feb. 17, '74.
SW. SE	"	"	"	"	3 80	"	4 50	"	3 00	"	2 00	"
NE. NE	23	"	"	"	3 84	"	Deeded.	Jan. 30, '71	Deeded.		Deeded.	
NW. NE	"	"	"	"	3 84	"	"	"	"		"	
SW. NE	"	"	"	"	3 84	"	"	"	"		"	
SE. NE	"	"	"	"	3 80	"	4 50	Feb. 29, '72	3 00	Feb. 28, '73	2 50	Feb. 17, '74.
NE. SE	"	"	"	"	3 80	"	3 60	"	2 22	"	1 39	"
NW. NE	24	"	"	"	3 84	"	9 00	"	8 40	"	3 44	"
SW. NE	"	"	"	"	Deeded.	Jan. 17, '70	Deeded.		Deeded.		Deeded.	
NW. NW	"	"	"	"	3 84	Feb. 24, '71	9 00	Feb. 29, '72	8 40	Feb. 28, '73	3 44	Feb. 17, '74.
SW. NW	"	"	"	"	3 20	"	5 10	"	4 60	"	3 44	"
SE. NW	"	"	"	"	3 84	"	9 00	"	8 40	"	3 44	"
NE. SW	"	"	"	"	3 84	"	9 00	"	7 76	"	3 18	"
NW. SW	"	"	"	"	3 20	"	5 10	"	4 27	"	3 18	"
NE. NE	26	"	"	"	3 20	"	5 10	"	3 00	"	2 48	"
NW. NE	"	"	"	"	3 20	"	5 10	"	3 00	"	2 48	"
SW. NE	"	"	"	"	3 20	"	5 10	"	3 00	"	2 48	"
SE. NE	"	"	"	"	3 20	"	5 10	"	3 00	"	2 48	"
NE. SE	"	"	"	"	3 80	Feb. 28, '71	5 10	"	3 40	"	2 48	"
NW. SE	"	"	"	"	3 80	"	4 50	"	3 40	"	2 48	"
SW. SE	"	"	"	"	3 80	"	5 10	"	3 40	"	2 48	"
NW. NE	1	73	42	34. 80	3 80	Oct. 27, '71						
NE. SW	"	"	"	40	Deeded.	Jan. 17, '70	Deeded.		Deeded.		Deeded.	

SE. SW	"	"	"	"	"	"	"	"	"	"	"	"
NW. NW	13	"	"	"	3 60	Feb. 24, '71	"	"	"	"	"	"
128 NW. NE	19	73	42	40	$3 36	Feb. 24, '71	"	"	"	"	"	"
SW. NE	"	"	"	"	3 36	"	"	"	"	"	"	"
SE. SW	"	"	"	"	Deeded.	Oct. 24, '70	Deeded.	"	Deeded.	"	Deeded.	"
NW. SE	"	"	"	"	3 36	Feb. 24, '71	"	"	"	"	"	"
SW. SE	"	"	"	"	3 36	"	"	"	"	"	"	"
NE. NW	31	"	"	"	Deeded.	Jan. 17, '70	Deeded.	"	Deeded.	"	Deeded.	"
NE. NW	1	71	43	29. 84	"	July 15, '64	"	"	"	"	"	"
NW. NW	"	"	"	29. 62	"	"	"	"	"	"	"	"
SW. NW	"	"	"	40	"	"	"	"	"	"	"	"
SE. NW	"	"	"	"	"	"	"	"	"	"	"	"
NW. SE	"	"	"	"	1 62	Feb. 24, '71	$1 65	Feb. 29, '72	$1 80	Feb. 28, '73	$2 35	Feb. 17, '74.
SW. SE	"	"	"	"	1 62	"	1 65	"	1 80	"	2 35	"
NE. NW	2	"	"	28. 58	1 22	"	1 99	"	2 13	"	2 53	"
NW. NW	"	"	"	28. 25	1 18	"	1 92	"	2 13	"	2 47	"
SW. NW	"	"	"	40	1 68	"	2 75	"	3 00	"	3 52	"
NE. NE	3	"	"	27. 98	1 18	"	1 92	"	2 10	"	2 47	"
NW. NE	"	"	"	27. 86	Deeded.	March 19, '64	Deeded.		Deeded.		Deeded.	
SW. NE	"	"	"	40	"	"	"		"		"	
SE. NE	"	"	"	"	1 68	Feb. 24, '71	2 75	Feb. 29, '72	3 00	Feb. 28, '73	3 13	Feb. 17, '74.
NE. NW	"	"	"	27. 75	1 18	"	1 92	"	2 09	"	2 19	"
NW. NW	"	"	"	27. 65	1 14	"	1 92	"	2 09	"	2 17	"
SW. NW	"	"	"	40	1 68	"	2 75	"	3 00	"	3 13	"
SE. NW	"	"	"	"	1 68	"	2 75	"	3 00	"	3 13	"
NE. SE	"	"	"	"	1 68	"	2 75	"	3 00	"	2 74	"
NW. SE	"	"	"	"	1 26	"	5 19	"	6 00	"	6 26	"
SW. SE	"	"	"	"	1 26	"	5 19	"	6 00	"	6 26	"
SE. SE	"	"	"	"	1 68	"	2 75	"	3 00	"	2 74	"
NE. NE	4	"	"	27. 43	1 14	"	1 86	"	2 04	"	1 27	"
NW. NW	"	"	"	26. 33	1 09	"	1 86	"	1 82	"	90	"
129 SW. SE	4	71	43	40	$1 68	Feb. 24, '71	$2 75	Feb. 29, '72	$3 00	Feb. 28, '73	$1 37	Feb. 17, '74.
SE. SE	"	"	"	"	"	"	2 75	"	3 00	"	1 37	"
SW. NE	5	"	"	"	Deeded.	Dec. 1, '64	Deeded.		Deeded.		Deeded.	
SE. NE	"	"	"	"	"	Jan. 27, '66	"		"		"	
NE. NW	"	"	"	25. 82	1 05	Feb. 24, '71	1 44	J. N. D. Feb. 29, '72.	1 41	Feb. 28, '73	90	Feb. 17, '74.
NW. NW	"	"	"	25. 67	1 05	"	1 43	J. N. D. "	1 40	"	88	"
SW. NW	"	"	"	40	1 62	"	2 20	J. N. D. "	2 16	"	1 38	"
SE. NW	"	"	"	"	1 62	"	2 20	J. N. D. "	2 16	"	2 29	"
NE. SE	"	"	"	"	Deeded.	Dec. 11, '65	Deeded.		Deeded.		Deeded.	
NW. SE	"	"	"	"	"	Dec. 7, '63	"		"		"	
SW. SE	"	"	"	"	"	Nov. 24, '64	"		"		"	
SE. SE	"	"	"	"	"	"	"		"		"	
NW. NE	9	"	"	"	1 68	Feb. 24. '71	2 87	Feb. 29, '72	2 81	Feb. 28, '73	1 37	Feb. 17, '74.
NE. NW	"	"	"	"	1 68	"	2 87	"	2 70	"	1 27	"
NW. NW	"	"	"	"	1 68	"	2 87	"	2 70	"	1 37	"
NW. NE	10	"	"	"	2 16	"	3 30	"	3 01	"	2 11	"
SW. NE	"	"	"	"	2 16	"	2 75	"	3 02	"	2 11	"
NE. NW	"	"	"	"	4 32	"	5 50	"	5 48	"	7 82	"
SE. NW	"	"	"	"	4 32	"	5 50	"	5 48	"	6 26	"
N½. SW	17	"	"	"	Deeded.	March 19, '64	Deeded.		Deeded.		Deeded.	

EXHIBIT A—Continued.

Part of section.	S.	T.	R.	Acres.	Taxes paid for 1870.		Taxes paid for 1871.		Taxes paid for 1872.		Taxes paid for 1873.	
					Am't.	Date.	Am't.	Date.	Am't.	Date.	Am't.	Date.
NW. SW	"	"	"	"	2 04	"	2 75	J. N. D. Feb 29, '72.	3 03	Sept. 30, '73	2 69	Sept. 30, '74.
SW. SW	"	"	"	"	2 04	"	2 39	J. N. D. "	3 03	"	2 38	"
SE. SW	"	"	"	"	2 04	"	2 75	J. N. D. "	3 03	"	2 15	"
NE. SE	"	"	"	"	Deeded	March 19, '64	Deeded		Deeded		Deeded	
NW. SE	"	"	"	"	"	"	"		"		"	
SW. SE	"	"	"	"	2 04	Feb. 24, '71	2 75	J. N. D. Feb. 29, '72.	3 03	Sept. 30, '70	2 15	Sept. 30, '74.
SE. SE	"	"	"	"	Deeded	Oct. 10, '64	Deeded		Deeded		Deeded	
NE. NE	18	"	"	"	1 68	Feb. 24, '71	2 87	Feb. 29, '72	2 08	Feb. 28, '73	1 83	Feb. 19, '74.
NE. NE	20	"	"	"	1 79	"	2 35	"	2 39	"	"	"
130 SE. NE	20	71	43	40	$1 79	Feb. 24, '71	$2 35	Feb. 29, '72	$2 39	Feb. 28, '73	$1 83	Feb. 19, '74.
NE. SE	"	"	"	"	2 16	"	2 93	"	3 27	"	1 83	"
NW. SE	"	"	"	"	1 68	"	3 52	"	3 27	"	2 75	"
SE. SE	"	"	"	"	2 16	"	2 93	"	3 01	"	1 83	"
SW. NW	21	"	"	"	Deeded	Aug. 23, '64	Deeded		Deeded		Deeded	
NW. SW	"	"	"	"	"	"	"		"		"	
SW. SW	"	"	"	"	"	Oct. 10, '64	"		"		"	
NW. NW	28	"	"	"	1 62	Feb. 24, '71	2 35	Feb. 29, '72	2 41	Feb. 28, '73	1 60	Feb. 19, '74.
SW. NW	"	"	"	"	1 62	"	2 35	"	2 41	"	1 60	"
NW. SW	"	"	"	"	1 62	"	2 35	"	2 41	"	1 60	"
NE. SE	29	"	"	"	1 26	"	2 93	"	2 97	"	1 60	"
SE. SE	"	"	"	"	Deeded	Nov. 24, '64	Deeded		Deeded		Deeded	
Lot 1, NE. NE	31	"	"	1. 65	5	"	29	Feb. 29, '72	29	Feb. 28, '73	05	Feb. 19, '74.
NE. SE	32	"	"	"	2 16	"	2 86	"	2 97	"	1 84	"
SE. SE	"	"	"	"	2 16	"	2 57	"	2 61	"	1 84	"
SW. NE	34	"	"	"	1 84	"	2 39	"	2 34	"	92	"
NW. NW	"	"	"	"	1 56	"	2 75	"	2 70	"	1 69	"
NE. SE	"	"	"	"	1 84	"	2 75	"	2 70	"	76	"
NW. SE	"	"	"	"	1 84	"	2 75	"	2 70	"	1 37	"
SE. SE	"	"	"	"	1 84	"	2 75	"	2 70	"	76	"
NW. SW	35	"	"	"	2 03	"	1 65	"	1 62	"	92	"
SW. SW	"	"	"	"	2 03	"	1 65	"	1 62	"	76	"
SE. SW	"	"	"	"	1 74	"	1 65	"	1 62	"	76	"
SW. SE	"	"	"	"	1 84	"	2 75	"	2 70	"	1 83	"
NE. NE	5	72	"	31. 03	3 28	Feb. 24, '71	2 97	"	3 52	"	1 53	Feb. 20, '74.
NE. SW	17	"	"	"	3 28	"	5 44	"	4 00	"	3 90	"
NW. SW	"	"	"	"	3 28	"	5 44	"	4 00	"	3 90	"
SW. SW	"	"	"	"	3 28	"	4 96	"	3 52	"	3 90	"
SE. SW	"	"	"	"	3 28	"	5 44	"	4 00	"	3 90	"

131	NW. SE	17	72	43	40	$3 50	Feb. 24, '71	$3 84	Feb. 29, '72	$4 00	Feb. 28, '73	$3 90	Feb. 20, '74
	SW. SE	"	"	"	"	3 50	"	3 84	"	4 00	"	3 90	"
SE. SE		"	"	"	"	3 50	"	3 84	"	4 00	"	3 90	"
SE. NW		19	"	"	"	3 50	"	5 44	"	4 00	"	3 90	"
NE. NE		20	"	"	"	3 50	"	3 84	"	5 28	"	3 90	"
NW. NE		"	"	"	"	3 50	"	3 84	"	5 28	"	3 90	"
SW. NE		"	"	"	"	3 50	"	3 84	"	5 28	"	3 90	"
SE. NE		"	"	"	"	3 50	"	3 84	"	5 28	"	3 90	"
NE. NW		"	"	"	"	3 50	"	5 44	"	5 28	"	3 90	"
NW. NW		"	"	"	"	3 50	"	5 44	"	5 28	"	3 90	"
SW. NW		"	"	"	"	3 50	"	5 44	"	5 28	"	3 90	"
SE. NW		"	"	"	"	3 50	"	5 44	"	5 28	"	3 90	"
NE. SW		"	"	"	"	3 50	"	4 96	"	5 28	"	3 90	"
NW. SW		"	"	"	"	3 50	"	4 96	"	5 28	"	3 90	"
SW. SW		"	"	"	"	3 50	"	4 96	"	5 28	"	3 90	"
SE. SW		"	"	"	"	3 50	"	4 96	"	4 80	"	3 90	"
SE. SE		"	"	"	"	3 50	"	3 36	"	4 80	"	3 90	"
SE. SW		26	"	"	"	6 72	"	3 41	"	2 32	"	2 94	"
NW. SW		27	"	"	"	6 72	"	5 12	"	2 90	"	5 43	"
NE. NE		29	"	"	"	4 10	"	4 80	"	6 11	"	2 34	"
NW. NE		"	"	"	"	4 10	"	4 80	"	6 11	"	2 34	"
SW. NE		"	"	"	"	4 10	"	4 80	"	6 60	"	2 34	"
NW. NW		"	"	"	"	4 10	"	5 44	H.S. R. "	4 89	"	2 34	"
SW. NW		"	"	"	"	4 10	"	5 44	"	5 28	"	3 34	"
NW. SW		"	"	"	"	4 10	"	5 44	"				"
SW. SW		"	"	"	"	4 10	"	5 44	"				"
SW. SE		30	"	"	"	2 46	"	5 44	"	4 00	Feb. 28, '73	2 34	Feb. 20, '74
NE. NE		31	"	"	"	3 28	"	5 44	H.S. R. "	2 71	"	2 34	"
	NW. NE	"	"	"	"	3 28	"	6 80	"	1 63	"	2 34	"
132	SW. NE	31	72	43	40	$3 28	Feb. 24, '71	$6 80	Feb. 29, '72	$5 00	Feb. 28, '73	$2 34	Feb. 20, '74
	SE. NE	"	"	"	"	3 28	"	5 44	H.S. R. "	4 00	"	2 34	"
NE. SE		"	"	"	"	3 28	"	5 44	"	4 00	"	2 34	"
NW. SE		"	"	"	"	3 28	"	6 80	"	5 00	"	2 34	"
SW. SE		"	"	"	"	3 28	"	6 80	"	5 00	"	2 34	"
SE. SE		"	"	"	"	3 28	"	5 44	H.S. R. "	4 00	"	2 34	"
NW. NW		32	"	"	"	4 10	"	6 80	"	5 94	"	2 34	"
SW. NW		"	"	"	"	4 10	"	5 44	"	5 94	"	2 34	"
NW. SW		"	"	"	"	3 28	"	5 44	"	5 28	"	2 34	"
SW. SW		"	"	"	"	3 28	"	5 44	"	5 28	"	2 34	"
SE. SW		"	"	"	"	4 10	"	6 80	"	6 60	"	2 34	"
NE. NE		33	"	"	"	3 50	"	5 04	"	7 20	"	7 80	"
NW. NE		"	"	"	"	3 50	"	3 36	"	4 80	"	3 90	"
NE. NW		"	"	"	"	3 50	"	3 36	J. N. D.	4 80	"	3 90	"
NW. NW		"	"	"	"	3 50	"	3 84	J. N. D.	4 44	"	3 90	"
SW. NW		"	"	"	"	3 50	"	3 84	J. N. D.	4 44	"	3 90	"
NW. SW		"	"	"	"	7 00	"	5 04	"	6 66	"	6 24	"
SW. SW		"	"	"	"	7 00	"	5 04	"	6 66	"	6 24	"
SE. SW		"	"	"	"	5 74	"	6 72	"	9 60	"	6 24	Feb. 21, '74
SW. SE		"	"	"	"	3 50	"	3 36	"	4 80	"	3 90	"
SE. SE		"	"	"	"	3 50	"	3 36	"	4 80	"	3 90	"
NW. NW		35	"	"	"	1 92	"	5 70	"	2 76	"	2 71	"
NE. NW		17	73	"	"	3 36	"						

EXHIBIT A—Continued.

Part of section.	S.	T.	R.	Acres.	Taxes paid for 1870.		Taxes paid for 1871.		Taxes paid for 1872.		Taxes paid for 1873.	
					Am't.	Date.	Am't.	Date.	Am't.	Date.	Am't.	Date.
SE. NW.	"	"	"	"	3 36	"						
NE. SW	"	"	"	"	2 52	"			3 22	Sept. 30, 73..	4 00	Sep. 30, '74.
SE. SW	"	"	"	"	2 52	"			3 23	"	1 53	"
NW. NE	18	"	"	"	1 62	"	1 28	Feb. 29, '72..	1 84	Feb. 28, '73..	95	Feb. 21, '74.
SW. NE	19	"	"	"	1 08	"	1 28	"	1 84	"	1 08	"
NW. NW.	"	"	"	40.30	1 66	"	1 92	"	2 76	"	1 12	"
133 NE. SE	19	73	43	40	$1 62	Feb. 24, '71..	$1 28	Feb. 29, '72..	$1 84	Feb. 28, '73..	$1 08	Feb. 21, '74.
NE. NW	20	"	"	"	3 04	"	1 80	"	1 61	Sept. 30, '72..	3 15	Sep. 30, '74.
SW. NW	"	"	"	"	3 04	"	1 80	"	1 60	Feb. 28, '73..	2 28	Feb. 21, '74.
SE. NW	"	"	"	"	3 04	"	1 80	"	1 60	"	2 28	"
NW. SW	"	"	"	"	3 04	"	1 80	"	1 60	"	3 80	"
SW. SW	"	"	"	"	3 04	"	1 80	"	1 60	"	3 80	"
NE. NE	30	"	"	"	1 62	"	1 92	"	2 76	"	1 08	"
SW. NE	"	"	"	"	1 62	"	1 92	"	2 76	"	1 08	"
NE. SW	"	"	"	"	1 62	"	1 92	"	2 76	"	1 08	"
NW. NE	1	72	44	31.04	2 56	"	1 95	"	2 75	"	1 83	Feb. 22, '74.
SW. NE	"	"	"	40	2 10	"	2 52	"	3 65	"	1 58	"
Lot 1, NE. NE	2	"	"	4.78	44	"		Not taxed		Not taxed		Not taxed.
Lot E. h. NE	11	"	"	15.68	1 40	"	1 92	Feb. 29, '72..	1 86	Feb. 28, '73..		"
NE. NE	12	"	"	40	4 10	"	4 96	"	5 28	"	1 40	Feb. 22, '74.
NE. NW	"	"	"	"	3 50	"		Not taxed		Not taxed	98	"
SE. NW	"	"	"	"	3 50	"		"		"	98	"
SE. SW	"	"	"	"	3 50	"	5 44	Feb. 29, '72..	5 28	Feb. 28, '73..	98	"
SW. SE	"	"	"	"	3 50	"	5 44	"	5 28	"	98	"
NW. NE	13	"	"	"	2 46	"	6 80	"	5 00	"	1 56	Feb. 21, '74.
SW. NE	"	"	"	"	2 80	"	6 80	J.N.D. "	5 00	"	1 56	"
NE. NW	"	"	"	"	3 28	"	6 80	"	5 00	"	1 56	"
NW. SE	"	"	"	"	3 28	"	5 44	"	4 00	"	2 34	"
NE. NE	36	"	"	"	2 80	"	5 44	"	3 52	"	2 34	"
NE. SE	"	"	"	"	2 46	"	5 44	"	4 00	"	1 56	"
Lot 4, SW. SE	"	"	"	26.74	2 36	"		Not taxed		Not taxed		Not taxed.
Lot 2, W. h. SE	23	73	"	42		Not taxed		"		"		"
Lot 3, E. h. SW	"	"	"	22.50		"		"		"		"
Lot 1 { NE. NW. }	26	"	"	47.20		"		"		"		"
Lot 1 { NW. NW }	"	"	"			"		"		"		"
134 NE. NE	36	73	44	40	$2 10	Feb. 24, '71..	$1 68	Feb. 29, '72..	$2 40	Feb. 28, '73..	$1 40	Feb. 21, '74.
Total					912 04		1,230 65		1,063 20		919 47	

Grand total for 1870, 1871, 1872, and 1873, $4,125.36.

SUPPLEMENTAL LIST.

Part of section.	S.	T.	R.	Acres.	Taxes paid for 1870.		Taxes paid for 1871.		Taxes paid for 1872.		Taxes paid for 1873.	
					Am't.	Date.	Am't.	Date.	Am't.	Date.	Am't.	Date.
NW. SE	7	72	40	40	$3 20	Feb. 24, '71	$5 10	Feb. 29, '72	$4 60	Feb. 22, '73	$2 96	Feb. 16, '74.
SW. SE	"	"	"	40	3 20	"	5 10	"	4 60	"	2 96	"
NW. SW	1	71	43	40	1 68	"	2 20	"	2 40	Feb. 28, '73	2 35	Feb. 17, '74.
SW. SW	"	"	"	40	1 68	"	2 20	"	2 40	"	2 35	"
Total of supplemental list					$9 76		$14 60		$14 00		$10 62	
Total of both lists					921 80		1,245 25		1,077 20		930 09	

Grand total	$4,260 32
Deduct	85 98
	$4,154 34

EXHIBIT B.

Swamp sections quitclaimed by the B. & M. to Mills County.—Certified to B. & M. 11,492.37; *not certified,* 480; *total,* 11,972.37 *acres.*

Part of section.	S.	T.	R.	Date of sale.	Kind of sale.	Acres.
NW. NW.	5	72	40	Oct. 20, 1869	84½	27.02
NW. NW.	17	"	"	"	"	40
SW. NW.	"	"	"	"	"	"
SW. NE.	19	"	"	"	"	"
SE. NE.	"	"	"	"	"	"
NE. NW.	1	73	"	"	"	35.23
SE. NW.	"	"	"	"	"	40
NW. NW.	3	"	"	"	"	35.85
SW. NW.	"	"	"	"	"	40
NW. SW.	"	"	"	"	"	"
SW. SW.	"	"	"	"	"	"
NE. SE.	11	"	"	"	"	"
SW. SE.	"	"	"	"	"	"
SE. SE.	"	"	"	"	"	"
SE. NE.	15	"	"	"	"	"
NE. NW.	"	"	"	"	"	"
NW. NW.	"	"	"	"	"	"
SW. NW.	"	"	"	"	"	"
SE. NW.	"	"	"	"	"	"
NE. SW.	"	"	"	Jan. 30, 1871	121	"
NW. SW.	"	"	"	"	"	"
SW. SW.	"	"	"	"	"	"
SE. SW.	"	"	"	"	"	"
NE. SE.	"	"	"	Oct. 20, 1869	84½	"
NW. SE.	"	"	"	"	"	"
SW. SE.	"	"	"	"	"	"
SE. SE.	15	73	40	Oct. 20, 1869	84½	40
SW. SE.	17	"	"	"	"	"
SE. SE.	"	"	"	"	"	"
NE. NW.	21	"	"	Jan. 30, 1871	"	"
NW. NW.	"	"	"	"	"	"
SW. NW.	"	"	"	"	"	"
SE. NW.	"	"	"	"	"	"
NE. SW.	"	"	"	Oct. 20, 1869	"	"
NW. SW.	"	"	"	"	"	"
NW. NE.	29	"	"	Jan. 30, 1871	121	"
NE. NW.	"	"	"	"	"	"
NW. NW.	"	"	"	Oct. 20, 1869	84½	"
SW. NW.	"	"	"	Jan. 30, 1871	121	"
NW. SW.	"	"	"	"	"	"
NE. NW.	31	"	"	"	"	"
NW. NW.	"	"	"	"	"	34.65
SE. SW.	"	"	"	Oct. 20, 1869	84½	40
NE. SE.	"	"	"	"	"	"
NW. SE.	"	"	"	"	"	"
SW. SE.	"	"	"	"	"	"
SE. SE.	"	"	"	"	"	"
NE. NE.	9	71	41	Jan. 30, 1871	121	"
NW. NE.	"	"	"	"	"	"
SW. NE.	"	"	"	Oct. 20, 1869	84½	"
SE. NE.	"	"	"	"	"	"
NE. NW.	"	"	"	Jan. 30, 1871	121	"
136 NW. NW.	9	71	41	January 30, '71	121	40
SW. NW.	"	"	"	"	"	"
SE. NW.	"	"	"	"	"	"
NE. SW.	"	"	"	"	"	"
NW. SW.	"	"	"	"	"	"
SW. SW.	"	"	"	"	"	"
SE. SW.	"	"	"	"	"	"
NE. SE.	"	"	"	October 20, '69	84½	"
NW. SE.	"	"	"	"	"	"
SW. NW.	11	"	"	"	"	"
NW. SW.	"	"	"	"	"	"
SW. SW.	"	"	"	"	"	"
NE. NE.	15	"	"	"	"	"
NW. NE.	"	"	"	"	"	"
SW. NE.	"	"	"	"	"	"
SE. NE.	"	"	"	"	"	"
NE SE.	"	"	"	"	"	"
SE. SE.	"	"	"	"	"	"
NE. NE.	17	"	"	"	"	"
NE. NE.	21	"	"	"	"	"
NW. NE.	"	"	"	"	"	"
SW. NE.	"	"	"	"	"	"
SE. NE.	"	"	"	"	"	"
NE. SW.	"	"	"	"	"	"
NW. SW.	"	"	"	"	"	"
SW. SW.	"	"	"	"	"	"
SE. SW.	"	"	"	"	"	"
NE. SE.	"	"	"	"	"	"

	NW. SE.	"	"	"	"	"	"		NE. SE.	"	"	"	"	"	"
	SW. SE.	"	"	"	"	"	"		SE. SE.	"	"	"	"	"	"
	SE. SE.	21	71	41	October 20, '69	84½	40		NE. SW.	29	"	"	"	"	"
	NW. NE.	"	"	"	"	"	"		NW. SW.	"	"	"	"	"	"
	SW. NE.	27	"	"	January 30, '71	121	"		SW. SW.	"	"	"	"	"	"
	NE. NW.	"	"	"	"	"	"		SE. SW.	"	"	"	"	"	"
	NW. NW.	"	"	"	October 20, '69	84½	"		NE. NE.	35	"	"	January 30, '71	121	"
	SW. NW.	"	"	"	"	"	"		NW. NE.	35	72	41	January 30, '71	121	40
	SE. NW.	"	"	"	"	"	"		SW. NE.	"	"	"	"	"	"
	NE. SW.	"	"	"	"	"	"		SE. NE.	"	"	"	"	"	"
	NW. SW.	"	"	"	January 30, '71	121	"		NW. NW.	"	"	"	"	"	"
	SW. SW.	"	"	"	October 20, '69	84½	"		NE. SW.	"	"	"	October 20, '69	84½	"
	SE. SW.	"	"	"	"	"	"						January 30, '71	121	"
	NW. SE.	"	"	"	January 30, '71	121	"		NW. SW.	"	"	"	{ E. ½ Jan. 30, '71.	121	"
	NE. NE.	29	"	"	October 20, '69	84½	"						{ W. ½ Oct. 20, '69	84½	
	SE. NE.	"	"	"	"	"	"		SW. SW.	"	"	"	October 20, '69	84½	"
	NE. NW.	"	"	"	"	"	"		SE. SW.	"	"	"	"	"	"
	SE. NW.	"	"	"	"	"	"		NE. SE.	"	"	"	"	"	"
	NW. SW.	"	"	"	January 30, '71	121	"		NW. SE.	"	"	"	"	"	"
	NE. SE.	"	"	"	October 20, '69	84½	"		SW. SE.	"	"	"	"	"	"
	SE. SE.	"	"	"	"	"	"		SE. SE.	"	"	"	"	"	"
	NW. NE.	33	"	"	"	"	"		SW. SW.	19	73	"	"	"	35.17
	SW. NE.	"	"	"	"	"	"		SW. NE.	1	"	42	"	"	40
	NE. NW.	"	"	"	"	"	"		SE. NE.	"	"	"	"	"	"
	NW. NW.	"	"	"	"	"	"		NW. SW.	"	"	"	"	"	"
	SE. NW.	"	"	"	January 30, '71	121	"		SW. SW.	"	"	"	"	"	"
	NW. SE.	"	"	"	October 20, '69	84½	"		NE. SE.	"	"	"	"	"	"
	SW. SE.	"	"	"	"	"	"		NW. SE.	"	"	"	"	"	"
	SE. SE.	1	72	"	"	"	"		NE. NE.	5	"	"	"	"	37.14
	SE. NW.	19	"	"	"	"	"		NW. NE.	"	"	"	"	"	36.86
137	NE. NW.	23	72	41	October 20, '69	84½	40		SW. NE.	"	"	"	"	"	40
	SE. NW.	"	"	"	"	"	"		SE. NE.	"	"	"	"	"	"
	NE. SW.	"	"	"	"	"	"		NE. SW.	"	"	"	"	"	"
	NW. SW.	"	"	"	"	"	"		SE. NW.	"	"	"	"	"	"
	SW. SW.	"	"	"	"	"	"		NE. NE.	11	"	"	"	"	"
	SE. SW.	"	"	"	"	"	"		SE. NE.	"	"	"	"	"	"
	NW. SE.	"	"	"	"	"	"		NE. SE.	"	"	"	"	"	"
	SW. SE.	"	"	"	"	"	"		SE. SE.	"	"	"	"	"	"
	NE. NE.	"	"	"	"	"	"	138	NE. NW.	19	73	42	Oct. 20, 1869	84½	40
	NW. NE.	25	"	"	"	"	"		SE. NW.	"	"	"	"	"	"
	SW. NE.	"	"	"	"	"	"		NE. NE.	25	"	"	Jan. 30, 1871	121	"
	SE. NE.	"	"	"	"	"	"		NW. NE.	"	"	"	"	"	"
	NE. NW.	"	"	"	"	"	"		SW. NE.	31	"	"	Oct. 20, 1869	84½	"
	NW. NW.	"	"	"	"	"	"		NW. SE.	"	"	"	Jan. 30, 1871	121	"
	SW. NW.	"	"	"	"	"	"		NE. SW.	3	71	43	Oct. 20, 1869	84½	"
	SE. NW.	"	"	"	"	"	"		NW. SW.	"	"	"	"	"	"
	NE. SW.	"	"	"	"	"	"		SE. SW.	"	"	"	"	"	"
	SE. SW.	"	"	"	"	"	"		SW. SW.	9	"	"	"	"	"
	NE. NE.	27	"	"	"	"	"		SE. SW.	"	"	"	Jan. 30, 1871	121	"
	NW. NE.	"	"	"	"	"	"		NE. SW.	"	"	"	"	"	"
	SW. NE.	"	"	"	"	"	"		NW. SW.	"	"	"	"	"	"
	SE. NE.	"	"	"	"	"	"		SE. SE.	"	"	"	Oct. 20, 1869	84½	"
									NE. NW.	11	"	"	"	"	"

EXHIBIT B—Continued.

Part of section.	S.	T.	R.	Date of sale.	Kind of sale.	Acres.
NW. NW	"	"	"	Jan. 30, 1871	121	"
NW. NW	17	"	"	"	"	"
SW. NW	"	"	"	"	"	"
NE. NE	19	"	"	Oct. 20, 1869	84½	"
NW. NE	21	"	"	"	"	"
NE. NW	"	"	"	"	"	"
SE. NW	"	"	"	"	"	"
NE. NE	29	"	"	"	"	"
NW. NE	"	"	"	Jan. 30, 1871	121	"
SW. NE	"	"	"	"	"	"
SE. NE	"	"	"	Oct. 20, 1869	84½	"
NW. SE	"	"	"	"	"	"
SW. SE	"	"	"	"	"	"
NW. NE	33	"	"	"	"	"
SW. NE	33	71	43	Jan. 30, 1871	121	40
SE. NE	"	"	"	"	"	"
SE. NW	"	"	"	Oct. 20, 1869	84½	"
NE. SW	"	"	"	"	"	"
SE. SW	"	"	"	"	"	"
NE. SE	"	"	"	Jan. 30, 1871	121	"
NW. SE	"	"	"	Oct. 20, 1869	84½	"
SW. SE	"	"	"	"	"	"
SE. SE	"	"	"	"	"	"
NW. NE	5	72	"	"	"	31
SW. NE	"	"	"	"	"	40
NE. NW	"	"	"	"	"	30.95
NW. NW	"	"	"	"	"	30.90
SW. NW	"	"	"	"	"	40
SE. NW	"	"	"	"	"	"
NW. SW	"	"	"	"	"	"
SW. SW	"	"	"	"	"	"
SE. SW	"	"	"	"	"	"
SW. NW	7	"	"	"	"	41.51
NE. SE	17	"	"	"	"	40
NE. NW	19	"	"	"	"	"
NW. NW	"	"	"	"	"	40.22
SW. NW	"	"	"	"	"	40.09
NE. NE	21	"	"	"	"	40
NW. NE	"	"	"	"	"	"
SW. NE	"	"	"	"	"	"
SE. NE	"	"	"	"	"	"

Part of section.	S.	T.	R.	Date of sale.	Kind of sale.	Acres.
NE. NW	"	"	"	"	"	"
NW. NW	"	"	"	"	"	"
139 SW. NW	21	72	43	Oct 20, 1869	84½	40
SE. NW	"	"	"	"	"	"
NE. SW	"	"	"	"	"	"
NW. SW	"	"	"	"	"	"
SW. SW	"	"	"	"	"	"
SE. SW	"	"	"	"	"	"
NE. SE	"	"	"	Jan. 30, 1871	121	"
NW. SE	"	"	"	"	"	"
SW. SE	"	"	"	"	"	"
SE. SE	"	"	"	"	"	"
SW. SW	23	"	"	Oct. 20, 1869	84½	"
NE. NE	27	"	"	"	"	"
SW. NE	"	"	"	Jan. 30, 1871	121	"
SE. NE	"	"	"	Oct. 20, 1869	84½	"
NE. NW	"	"	"	Jan. 30, 1871	121	"
NW. NW	"	"	"	"	"	"
SW. NW	"	"	"	"	"	"
SE. NW	"	"	"	"	"	"
NE. SW	"	"	"	"	"	"
SW. SW	"	"	"	Oct. 20, 1869	84½	"
SE. SW	"	"	"	Jan. 30, 1871	121	"
NE. SE	"	"	"	Oct. 20, 1869	84½	"
NW. SE	"	"	"	Jan. 30, 1871	121	"
SW. SE	"	"	"	"	"	"
SE. SE	"	"	"	"	"	"
NE. SW	29	"	"	Oct. 20, 1869	84½	"
SE. SW	"	"	"	"	"	"
NW. SE	"	"	"	"	"	"
SW. SE	"	"	"	"	"	"
SE. NW	33	72	43	Oct. 20, 1899	84½	40
SW. NW	35	"	"	"	"	"
SE. NW	"	"	"	"	"	"
NE. SE	"	"	"	"	"	"
NW. SE	"	"	"	"	"	"
SW. SE	"	"	"	"	"	"
SE. SE	"	"	"	"	"	"
SE. NE	19	73	"	"	"	"
NW. NE	31	"	"	"	"	"
SW. NE	"	"	"	"	"	"

NW. SE	"	"	"	"	"	"	"
SW. SE	"	"	"	"	"	"	"
NE. NE	1	72	44	"	"	"	"
SE. NE	"	"	"	"	"	"	"
Part lot 1, NW. NW	"	"	"	"	"	"	"
Lot 2 { SW. NW	"	"	"	"	"	"	"
Lot 2 { SE. NW	"	"	"	"	"	"	"
Lot 3 { NE. SW	"	"	"	"	"	"	"
Lot 3 { NW. SW	"	"	"	"	"	"	"
Lot 4 { SW. SW	"	"	"	"	"	"	"
Lot 4 { SE. SW	"	"	"	Jan. 30, 1871	121	"	"
NE. SE	"	"	"	Oct. 20, 1869	84½	"	"
SW. SE	"	"	"	Jan. 30, 1871	121	"	"
NE. SW	13	"	"	"	"	"	"
NW. NE	25	"	"	Oct. 20, 1869	84½	"	"
SW. NE	"	"	"	"	"	"	"
NE. SW	"	"	"	Jan. 30, 1871	121	"	"
NW. SE	"	"	"	"	"	"	"
NE. NE	13	73	"	Oct. 20, 1869	84½	"	"
140 SE. NE	13	73	44	October 20, '69	84½	40	"
NE. SE	"	"	"	"	"	"	"
Lot 1, E. h. SE	27	"	"	January 30, '71	121	12. 60	
Lot 1 { NW. NW	35	"	"	October 20, '69	84½	40	
Lot 1 { SW. NW	"	"	"	January 30, '71	121	11. 10	
Lot 2 { SE. NW	35	73	44	January 30, '71	121	53. 04	
Lot 2 { NE. SW	"	"	"	October 20, '69	84½		
Lot 3, W. h. SE	"	"	"	"	"	"	47. 13
NE. NW	"	"	"	"	"	"	40

Grand total, 11,492.37 acres, all of which has been certified to the B. & M.

6115——7

SUPPLEMENTAL LIST.

Swamp selections quitclaimed by the B. & M. to Mills County, 480 acres, none of which have been certified to the B. & M.

Part of section.	S	T.	R.	Date of sale.	Kind of sale.	Acres.	Remarks.
SW. SE	19	72	41	October 20, '69	84½	40	App. as swamp Dec. 14, '70; pat. as swamp, pat. No. 9.
SW. SW	3	71	43	"	"	40	App. as swamp June 15, '67; pat. No. 4.
NE. NE	9	"	"	"	"	40	" " "
SW. SE	"	"	"	"	"	40	" " "
SW. NW	27	"	"	"	"	40	" " "
SW. SW	"	"	"	"	"	40	" " "
NE. NE	33	"	"	"	"	40	" " "
NE. NW	29	72	"	"	"	40	App. as swamp Dec. 14, '70; pat. No. 9.
SE. NW	"	"	"	"	"	40	" " "
SE. NE	33	"	"	"	"	40	" June 15, '67; pat. No. 4.
NE. SE	"	"	"	"	"	40	" Dec. 14, '70; pat. No. 9.
NE. NW	35	"	"	"	"	40	" " "
						480 acres.	

141 EXHIBIT C.

Swamp lands in Mills County, Iowa, quitclaimed by the B. & M. R. Co., J. N. Denison, or Henry S. Russell to parties holding title from Mills County, in pursuance of the compromise and settlement of 1868.

Part of section.	S.	T.	R.	To whom sold by the R. R. Co.	Date of sale.	Kind of sale.	Acres.
SE. NE	7	72	40	P. P. Johnson	October 17, '72	242	40
N. h. NW	"	"	"	Andrew Wearin	April 12, '71	126	78. 32
NE. SW	"	"	"	P. P. Johnson	October 17, '72	242	40
W. h. SW	"	"	"	Harry Wearin	April 12, '71	127	80. 47
SW. NE	15	73	"	J. J. Ewing	January 28, '73	286	29. 75
NW. SW	31	"	"	Lewis Robbins	February 8, '72	172	40
E. h. NW	15	71	41	Luther R. Martin	February 20, '71		80
NE. SW	"	"	"	Wm. G. Summers	October 21, '73	347	40
W. h. SW	"	"	"	Luther R. Martin	February 21, '71		80
SW. SE	27	"	"	Wm. G. Summers	October 21, '73	347	40
E. h. NE	33	"	"	H. W. Summers	December 14, '71	91	80
NW. SW	"	"	"	"	June 8, '72	192	40
SW. q	13	72	"	Josiah Wearin	January 30, '71	122	160
N. h. NE SW. NE	23	"	"	"	"	"	120
SW. NE	24	"	"	D. N. Smith	January 17, '70	93	40
E. h. SW	1	73	42	H. C. Watkins	"	89	80
NE. NW	31	"	"	D. C. Briggs	"	90	40
SW. q	19	72	43	Geo. D. Humphreys	October 18, '71	144	159. 81
E. h. SE	29	"	"	Thos. B. Gordon	July 7, '73		80
SW. NE	33	"	"	David Remick	September 14, '72	239	40
NW. SE SE. SE	1	"	44	Fred. Plumer	April 30, '72	177	80

142 EXHIBIT D.

Swamp selections quitclaimed by the B. & M., in pursuance of the compromise for the benefit of pre-emptors or purchasers.

Part of section.	S.	T.	R.	To whom sold by R. R. Co.	Date of sale.	Acres.	Remarks.
NW. NE	29	73	42	Mills County	Jan. 30, '71	40	$100 p'd by G. Plumb.
NE. NW	"	"	"	"	"	"	
SW. NW	"	"	"	"	"	"	$50, A. Emmett.
NE. NW	31	"	"	"	"	"	$100, V. Plumb.
NW. NW	"	"	"	"	"	34. 65	
NE. NE	9	71	41	"	"	40	$100, H. W. Summers.
NW. NE	"	"	"	"	"	"	
NE. NW	"	"	"	"	"	"	
NW. NW	"	"	"	"	"	"	$200, H. W. Summers.
SW. NW	"	"	"	"	"	"	
SE. NW	"	"	"	"	"	"	
NE. SW	"	"	"	"	"	"	
NW. SW	"	"	"	"	"	"	$200, W. G. Summers.
SW. SW	"	"	"	"	"	"	
SE. SW	"	"	"	"	"	"	
NW. NE	27	"	"	"	"	"	$100, H. H. Woodrow.
SW. NE	"	"	"	"	"	"	
NW. SW	29	"	"	"	"	"	$50, T. D. Davis.
NE. SW	35	72	"	"	"	"	
E. h. NW. SW	"	"	"	"	"	20	$75, W. H. Taft.
NW. SE	"	"	"	"	"	40	
SE. NW	9	71	43	"	"	"	$50, I. Meadows.
NE. SW	"	"	"	"	"	"	
NW. SW	"	"	"	"	"	"	$150, John Haynie.
NW. NW	11	"	"	"	"	"	
NW. NW	17	"	"	"	"	"	$50, D. Rhodes.
SW. NW	"	"	"	"	"	"	
NW. NE	29	"	"	"	"	"	$100, A. R. Wright.
SW. NE	"	"	"	"	"	"	
SE. NE	33	"	"	"	"	"	$100, R. Queen.
NE. SE	"	"	"	"	"	"	
SW. NE	27	"	"	"	"	"	$100, Jane Pack.
NE. SW	"	"	"	"	"	"	
NW. SE	"	"	"	"	"	"	$150 John Johnson.
Part lot 4, SE. SW	1	72	44	"	"	"	$100, J. Barnes.
SW. SE	"	"	"	"	"	"	
NE. SW	13	"	"	"	"	"	$50, W. H. Hinton.

143

EXHIBIT E.

List of swamp sections on which the B. & M. released tax titles held by J. N. Denison to parties claiming under Mills County, in pursuance of the compromise.

Part of section.	S.	T.	R.	Acres.	
NE. SW	7	72	40	40	P. P. Johnson.
SW. NE	15	73	"	29. 75	J. J. Ewing.
NE. SW	31	"	"	40	Lewis Robbins.
E. h. NW	15	71	41	80	Luther R. Martin.
W. h. SW	"	"	"	80	" "
NE. SW	"	"	"	40	Wm. G. Summers.
SW. SE	27	"	"	40	" "
NW. SW	33	"	"	40	H. W. Summers.
SW. q	19	72	43	159. 81	Geo. D. Humphreys.
E. h. SE	29	"	"	80	T. B. Gordon.
SW. NE	33	"	"	40	David Remick.
NW. SE	1	"	44	40	Fredrich Plumer
SE. SE	"	"	"	40	" "
				749 56	

EXHIBIT F.

Swamp selections in controversy sold by R. R. Co. subsequent December 31st, 1872.

Part of section.	S.	T.	R.	Acres.	To whom sold by railroad co.	Date of sale.	No. contract.	Total am't of sale.	Am't paid to Jan. 1, '76.	Am't unpaid Jan. 1, '76.	Terms of sale. Time.	Terms of sale. Int.	Date of 1st principal payment.
E. h. NW	5	72	40	66. 80	David Henderson	June 3, '73	2351	$1, 068 80	.....	$1, 068 80	10 y	6 %	June 3, '77.
E. h. SE	7	"	"	80	Strahan & Evans	Oct. 27, '74	3361	1, 280	.....	1, 280	"	"	Oct. 27, '78.
SW. q	8	"	"	160	Francis M. Thomas	Sept. 2, '74	3246	2, 400	.....	2, 400	"	"	Sept. 2, '78.
E. h	18	"	"	320	John Evans, jr	Sept. 1, '74	3124	7, 200	.....	7, 200	"	"	Sept. 1, '78.
N. h. NE	19	"	"	80	Strahan & Evans	Oct. 27, '74	3362	2, 000	$666 66	1, 333 34	2 y	10 %	Oct. 27, '74, ½.
N. h. SW	9	73	"	80	H. B. Thompson	Dec. 8, '73	2595	1, 600	.....	1, 600	10 y	6 %	Dec 8, '77.
S. h. SW	"	"	"	80	Wm. McCoy	Nov. 17, '73	2575	1, 600	.....	1, 600	"	"	Nov. 17, '77.
NW. q	10	"	"	160	John H. Whitside	March 4, '74	2727	2, 720	.....	2, 720	"	"	March 4, '78.
NW. SE	17	"	"	40	Geo. W. Newman	Jan. 15, '74	2720	520	.....	520	"	"	Jan. 15, '78.
NE. q	21	"	"	160	Strahan & Evans	April 16, '73	2267	3, 840	.....	3, 840	"	"	April 16, '77.
N. h. SE	"	"	"	80									
S. h. SW	"	"	"	80									
S. h. SE	"	"	"	80									
N. h. sec	28	"	"	320									
N. h. SW	"	"	"	80									
NE. NE	29	"	"	40	Strahan & Evans	June 9, '74	2968	5, 760	.....	5, 760	10 y	6 %	June 9, '78.
S. h. NE	"	"	"	80									
SE. NW	"	"	"	40									
E. h. SW	"	"	"	80									
SE. q	"	"	"	160									
SW. SW	22	"	"	40	J. H. McCave	Aug. 14, '73	2439	640	.....	640	10 y	6 %	Aug. 14, '67.
NW. SE	"	"	"	40	Wesley Coppock	Feb. 13, '74	2709	600	.....	600	"	"	Feb. 13, '78.
W. h. SE	28	"	"	80	B. F. Pickerill	Aug. 23, '73	2453	1, 280	.....	1, 280	"	"	Aug. 23, '77.
N. h. NE	31	"	"	80	Norman Curtis	Jan. 10, '74	2636	880	.....	880	"	"	Jan. 10, '78.
SW. NE	"	"	"	40	Lewis Robbins	April 1, '74	2823	440	.....	440	"	"	April 1, '78.
S. h. NW	"	"	"	74. 96	Valentine Plumb	Jan. 26, '74	2654	1, 199 36	.....	1, 199 36	"	"	Jan. 26, '78.
SW. SW	10	71	41	40	Chas. H. Darlin	Aug. 12, '73	2437	480	160	320	2 y	10 %	Aug. 12, '73, ½.
145 SE. SW	15	71	41	40	Corp. N. Mallory	Sept. 5, '73	2481	$2, 160	$2, 160	.....	2 y	10 %	
W. h. SE	"	"	"	80									
W. h. NE	28	"	"	80	Eaton Barnes	March 11, '74	2743	1, 800	.....	1, 800	10 y	6 %	March 11, '78.
SE. NW	"	"	"	40									
W. h. SW	"	"	"	80	Stephen D. Davis	Nov. 7, '74	3421	1, 024	682 66	341 34	2 y	10 %	½ down.
E. h. SW	29	"	"	80	Stephen D. Davis	Oct. 15, '74	3295	2, 176	1, 450 66	725 34	"	"	"
W. h. SE	"	"	"	80									
SE. NE	32	"	"	40	B. W. Sherman	Nov. 4, '74	3392	600	.....	600	10 y	6 %	Nov. 4, '78.
E. h. SW	33	"	"	80	Warren L. Roll	Oct. 1, '73	2521	1, 280	.....	1, 280	"	"	Oct. 1, '77.
SW. SW	"	"	"	40	W. & E. Antrim	June 21, '73	2390	640	.....	640	"	"	June 21, '77.
S. p't NE. SW	24	72	"	34. 50	Wm. Wheeler	Dec. 18, '74	3539	828	828	.....	2 y	10 %	All paid.

NE. q	26	"	"	160	Josiah Wearin	May 5, '74	2868	2,048	1,365 34	682 66	"	"	½ down.
N. h. SE	"	"	"	80	Wm. Wheeler	Dec. 16, '74	3531	1,344	448	896	"	"	"
SW. SE	"	"	"	40									
SW. SE	1	71	43	40	Rufus L. Merritt	Dec. 17, '74	3532	320		320	10 y	6 %	Dec. 17, '78.
SW. NE	34	"	"	40	Jesse Buckingham	Dec. 24, '73	2607	200	200		2 y	10 %	½ down.
NW. NW	"	"	"	40	Benj. Buckingnam	"	2608	600	600		"	"	"
NW. SE	"	"	"	40	Adam Focht	Nov. 18, '73	2576	400		400	10 y	6 %	Nov. 18, '77.
SW. SE	35	"	"	40	R. H. Coster	Nov. 9, '74	3417	240	160	80	2 y	10 %	½ down.
SE. NW	19	72	"	40	Flagg A. Nye	Aug. 9, '75	4186	668		668	10 y	6 %	Aug. 9, '79.
SE. SW	26	"	"	40	Andreas Kretz	Dec. 6, '73	2592	680		680	"	"	Dec. 6, '77.
W. h. NW	29	"	"	80	Abram Sherman	Oct. 2, '74	3334	1,200		1,200	"	"	Oct. 2, '78.
W. h. NW	33	"	"	80	Hiram M. Lewis	Sept. 29, '74	3259	1,155 20		1,155 20	"	"	Sept. 29, '78,
S. h. SE	"	"	"	80	John Carter	Nov. 16, '74	3777	1,280		1,280	"	"	Nov. 16, '78.
NW. NW	35	"	"	40	H. C. Watkins	June 2, '74	2937	800		800	"	"	June 2, '78
E. h. SW	17	73	"	80	Wm. R. Wall	Nov. 16, '74	3432	600	100	500	2 y	10 %	Nov. 16, '74.
W. h. NE	1	72	44	71. 04	Bernard Glenn	June 22, '74	2980	497 28		497 28	10 y	6 %	June 2, '78.
NE. NE	12	"	"	40	Thos. J. Baldwin	Dec. 16, '74	3530	400		400	"	"	Dec. 16, '78.
NW. SE	13	"	"	40	Hiram Hiles	July 12, '75	4159	440		440	"	"	July 12, '79.

EXHIBIT G.

Swamp selections in controversy, sold by the railroad company prior to December 31st, 1872.

Part of section.	S.	T.	R.	Acres.	To whom sold by railroad co.	Date of sale.	No contract.	Total am't of sale.	Am't paid to Jan. 1, '76.	Am't unpaid Jan. 1, '76.	Terms of sale. Time.	Terms of sale. Int.	Date of 1st principal payment.
NE. NE	5	72	40	26.44	Chas. Purcell	Nov. 3, '70	1237	$423 04	$141 01	$282 03	10 y	6 %	Nov. 3, '72.
W. h. NE	"	"	"	66.68	J. O. Munson	Sept. 5, '70	1001	1,066 88	355 63	711 25	"	"	Sept. 5, '72.
NE. NE	7	"	"	40	Samuel Pursell	May 11, '70	984	800	266 67	533 33	"	"	May 11, '72.
N. h. NW	"	"	"	78.32	Andrew Wearin	April 12, '71	Q. C.	97 90	97 90	Q. C. per comp'm ise.			
W. h. SW	"	"	"	80.47	Harry Wearin	" "	"	100	100 59	"	"		
E. h. NE	17	"	"	80	Henry Fisher	Aug. 12, '72	2013	1,600	177 78	1,422 22	10 y	6 %	Aug. 12, '74.
E. h. NE	4	73	"	75.94	Peter Eckley	May 27, '72	1936	1,063 16	236 26	826 90	"	"	May 27, '74.
SE. q	"	"	"	160	"	May 29, '71	1557	2,560	284 44	2,275 56	"	"	May 29, '73.
W. h. NE	9	"	"	80	"	June 4, '72	1981	1,280	.....	1,280	"	"	June 4, '74.
W. h. SW	14	"	"	80	H. E. Perry	Oct. 28, '70	1225	1,360	604 45	755 55	"	"	Oct. 28, '72.
SE. NE	20	"	"	40	Geo. Plumb	Oct. 26, '70	1174	1,152	1,152	.....	2 y	10 %	½ down.
E. h. SE	"	"	"	80									
SE. NW	11	71	41	40	Samuel Star	Dec. 17, '63	35	50	50	.....	.....	.....	
SE. SW	15	"	"	40	I. L. McCoy	May 23, '71	1543	2,400	200	2,200	2 y	10 %	
W. h. SE	"	"	"	80									
SE. SE	31	"	"	40	Geo. S. Wilson	Oct. 17, '71	1766	1,000	333 33	666 67	10 y	6 %	Canceled and resold.
SW. q	32	"	"	160	Frank Hobbs	March 16, '71	1384	3,200	.....	3,200	"	"	Oct. 17, '73.
SE. q	"	"	"	160	"	" "	1385	2,240	.....	2,240	"	"	March 16, '73.
E. h. NE	33	"	"	80	H. W. Summers	Dec. 14, '71	Q. C.	100	100	r comp'm ise.			"
NW. SW	"	"	"	40	"	April 22, '72	"	Per comp.; nothing paid.					
E. h. SE	"	"	"	80	"	Aug. 29, '71	1691	1,520	337 78	1,182 22	10 y	6 %	Aug. 29, '73.
SW. q	13	72	"	160	Josiah Wearin	Jan. 30, '71	Q. C.						
N. h. NE	23	"	"	80	"	" "	"	500	500	P'r special contract.			
SW. NE	"	"	"	40	"	" "	"						
SW. NE	24	"	"	40	D. N. Smith	Jan. 17, '70	"	50	50	Q. C. per comp'm ise.			
NW. NE	1	73	42	34.80	S. G. Sidener	Oct. 29, '70	1207	522	116	406	10 y	6 %	
E. h. SW	"	"	"	80	H. C. Watkins	Jan. 17, '70	Q. C.	100	100	Q. C. per comp'm ise.			Oct. 29, '72.
147 NW. NW	13	73	42	40	D. Cavanaugh	June 17, '71	1594	$880	$293 34	$586 66	10 y	6 %	June 17, '73.
W. h. NE	19	"	"	80	Fred. Choming	June 27, '71	1602	1088	1,088	.....	2 y	10 %	
SE. SW	"	"	"	40	F. M. Buffington	Oct. 24, '70	1159	608	608	.....	Cash.	.....	
W. h. SE	"	"	"	80	Ludwig Hausen	June 28, '71	1607	1,200	266 67	933 33	10 y	6 %	June 28, 73.
NE. NW	31	"	"	40	D. C. Briggs	Jan. 17, '70	Q. C.	50	50	Q. C. per compm' ise.			
E. h. NW	1	71	43	69.84	Thomas Wills	July 15, '64	56	87 30	87 30	.....	.....	.....	
W. h. NW	"	"	"	69.62	A. H. Burger	"	57	87	87	.....	.....	.....	
W. h. NE	3	"	"	67.86	Wm. E. Dean	Jan. 30, '64	47	85	85	.....	.....	.....	
SW. NE	5	"	"	40	Edward Weeks	Oct. 27, '63	25	50	50	.....	.....	.....	
SE. NE	"	"	"	"	Wm. Trisler	"	26	50	50	.....	.....	.....	
NE. SE	"	"	"	"	T. S. Crewdsen	"	27	50	50	.....	.....	.....	

NW. SE	"	"	"	"	Lucinda Wilson	Dec.	7, '63	54	50	50				
S. h. SE.	"	"	"	80	D. H. Epperson and Wm. Jones.	Jan.	30, '64	34 50	100	100				
NE. SW	17	"	"	40	P. L. Delashmut	Jan.	29, '64	49	150	150				
N. h. SE	"	"	"	80	"	"	"							
W. h. SW	"	"	"	"	Isom S. Wright	Nov.	6, '71	1783	1, 680		1, 680	10 y	6 %	Nov. 6, '73.
SE. SW	"	"	"	30	John L. Buell	Aug.	26, '71	2004	1, 088	362 67	725 33	2 y	10 %	½ down.
SW. SE	"	"	"	"	"	"	"							
SE. SE	"	"	"	"	Lyman Cutler	Oct.	'27, 63	30	50	50				
SW. NW	21	"	"	"	T. S. Crewdsen	Oct.	27, '63	31	100	100				
NW. SW	"	"	"	"	"	"	"							
SW. SW	"	"	"	"	A. P. Cutler	Jan.	29, '64	34	50	50				
SE. SE	29	"	"	"	James Queen	Oct.	27, '63	32	50	50				
W. h. SW	"	72	"	80	Giles Hinson	Oct.	16, '72	2122	1, 200	266 66	933 34	10 y	6 %	Oct. 16, '74.
E. h. NW	17	73	"	"	Otis E. Allis	June	29, '71	1608	1, 280	429 66	853 34	"	"	June 29, '73.
E. h. SW	"	"	"	"	J. T. Hamilton	June	27, '71	1603	960		960	"	"	C'n'led and resol'd.
NE. NW	20	"	"	40	S. L. Fletcher	Dec.	26, '71	1816	480		480	"	"	Dec. 26, '73.

Swamp selections quitclaimed by the B. & M., in pursuance of the compromise for the benefit of pre-emptors or purchasers, on which the B. & M. received the purchase money.

Part of section.	S.	T.	R.	To whom sold by the R. R. Co.	Date of sale.	Kind of sale.	Acres.	Remarks.
N. h. NW	7	72	40	Andrew Wearin	April 12, '71	Q. C.	78.32	$97 90 paid B. & M. by A. Wearin.
W. h. SW	"	"	"	Harry Wearin	" "	"	80 47	100 59 " " H. Wearin.
NW. NE }	29	73	"	Mills County	January 30, '71	.....	80	100 " " Geo. Plumb.
NE. NW }								
SW. NW	"	"	"	"	"	.....	40	50 " " Alf. Emmett.
N. h. NW	31	"	"	"	"	.....	74.65	100 " " V. Plumb.
N. h. NE	9	71	41	"	January 30, '71	.....	80	100 " " H. W. Summers.
NW. q	"	"	"	"	"	.....	160	200 " " "
SW. q	"	"	"	"	"	.....	160	200 " " W. G. Summers.
W. h. NE	27	"	"	"	"	.....	80	100 " " H. H. Woodrow.
NW. SW	29	"	"	"	"	.....	40	50 " " S. D. Davis.
E. h. NE	33	"	"	H. W. Summers	December 14, '71	Q. C.	80	100 " " H. W. Summers.
NE. SW	35	72	"	Mills County	January 30, '71	.....	40 }	75 " " W. H. Taft.
E. h. NW. SW	"	"	"	"	January 17, '70	.....	20 }	
E. h. SW	1	73	42	H. C. Watkins	"	Q. C.	80	100 " " H. C. Watkins.
NE. NW	31	"	"	D. C. Briggs	January 30, '71	"	40	50 " " D. C. Briggs.
NW. SE	"	"	"	Mills County	"	.....	40	50 " " Isaac Meadows.
SE. NW	9	71	43	"	"	.....	40 }	150 " " John Haynie.
N. h. SW	"	"	"	"	"	.....	80 }	
NW. NW	11	"	"	"	"	.....	40	50 " " Dan'l Rhodes.
W. h. NW	17	"	"	"	"	.....	80	100 " " A. R. Wright.
W. h. NE	29	"	"	"	"	.....	80	100 " " Reuben Queen.
SE. NE	33	"	"	"	"	.....	40 }	100 " " Jane Pack.
NE. SE	"	"	"	"	"	.....	40 }	
SW. NE. } NE. SW. } NW. SE. }	27	27	"	"	"	.....	120	150 " " John Johnson.
149 Part lot 4, SE. SW	1	72	44	Mills County	January 30, '71	.....	40 }	$100 paid B. & M. by Julius Barnes
SW. SE	"	"	"	"	"	.....	40 }	
NE. SW	13	"	"	"	"	.....	40	$50 paid B. & M. by W. H. Hinton.

EXHIBIT M.

List of swamp selections in controversy, upon which the B. & M. holds tax titles or certificates of tax sales, or both.

Part of section.	S.	T.	R.	Acres.	To whom sold by railroad co.	Date of sale.	No. contract.	Date of sale for taxes.	Am't tax sale, subseq't taxes.	Date of record of tax deed.	Holder of tax deed or tax certificate.
SW. SW	5	72	40	40				Oct. 3, '64	11 71	May 1, '69	J. N. Denison, for C., B. & Q.
NW. SE	22	73	"	"	Wesley Coppock	Feb. 13, '74	2709		5 36	Oct. 25, '72	C., B. & Q. R. R. Co.
SE. SW	15	71	41	"	Corp'n N. Mallory	Sept. 5, '73	2481	Oct. 3, '64	17 13	May 1, '69	J. N. Denison, for C., B. & Q.
								Oct. 2, '71	18 65	"	H. S. Russell " "
NW. SE	"	"	"	"	" "	" "	"	Oct. 3, '64	16 88	"	J. N. Denison " "
								Oct. 2, '71	18 30	"	H. S. Russell " "
SW. SE	"	"	"	"	" "	" "	"	Oct. 3, '64	16 89	"	J. N. Denison " "
								Oct. 2, '71	18 30	"	H. S. Russell " "
NW. SE	1	"	43	40				Oct. 3, '64	13 62	"	J. N. Denison " "
SW. SE	"	"	"	"	Rufus L. Merritt	Dec. 17, '74	3532	"	13 62	"	" " "
NE. NW	5	"	"	25.82				"	15 36	"	" " "
NW. NW	"	"	"	25.67				"	11 84	"	" " "
SW. NW	"	"	"	40				"	11 84	"	" " "
SE. NW	"	"	"	"				"	15 36	"	" " "
NW. SW	17	"	"	"	Isom S. Wright	Nov. 6, '71	1783	"	17 25	"	" " "
150 SW. SW	17	71	43	40	Isom S. Wright	Nov. 6, '71	1783	Oct. 3, '64	14 46	May 1, '69	J. N. Denison, for C., B. & Q.
SE. SW	"	"	"	"	John L. Buell	Aug. 26, '71	2004	"	14 44	"	" " "
SW. SE	"	"	"	"	" "	" "	"	"	14 61	"	" " "
NW. NW	29	72	"	"	Abram Sherman	Oct. 2, '74	3334	Oct. 3, '64	22 69	May 1, '69	
								Oct. 2, '71	25 62		H. S. Russell, for C., B. & Q.
SW. NW	"	"	"	"	" "	" "	"	Oct. 3, '64	22 68	"	J. N. Denison " "
								Oct. 2, '71	25 62		H. S. Russell " "
NE. NE	31	"	"	"				Oct. 3, '64	31 17		C., B. & Q. R. R. Co.
								Oct. 2, '71	4 69		H. S. Russell, for C., B. & Q.
SE. NE	"	"	"	"				Oct. 3, '64	31 17		C., B. & Q. R. R. Co.
								Oct. 2, '71	4 69		H. S. Russell, for C., B. & Q.
NE. SE	"	"	"	"				Oct. 3, '64	30 64		C., B. & Q. R. R. Co.
								Oct. 2, '71	4 70		H. S. Russell, for C., B. & Q.
SE. SE	"	"	"	"				Oct. 3, '64	30 65		C., B. & Q. R. R. Co.
								Oct. 2, '71	4 70		H. S. Russell, for C., B. & Q.
NW. NE	33	"	"	"				Oct. 3, '64	19 98		J. N. Denison " "
NE. NW	"	"	"	"		Sept. 29, '74	3259	"	19 56	May 1, '69	" " "
NW. NW	"	"	"	"	H. M. Lewis	"	"	"	19 56	"	" " "
SW. NW	"	"	"	"	"			"	20 61	"	" " "
SW. NE	31	"	"	"				"	18 80	"	" " "

151 II. Deposition of C. E. PERKINS (Transcript, 929):

In July, 1868, I was superintendent of the B. & M. R. R. Co., and ceased to act in that capacity on the 31st of December, 1872. I signed, on the part of the B. & M. R. R. Co., the original proposition made by the county. (Abstract, p. 21.) That proposition was made to me as resident agent of the company. I don't know anything of the making of the proposition by Mills County to the B. & M. R. R. Co. for the purpose of compromising a suit then pending in the Supreme Court of the United States between said railroad company and Mills County before that time. I remember nothing having been done by the company to bring about that proposition, but it is possible that I may be mistaken. At the time said proposition was made the road was completed to a point somewhere between Osceola and Afton. The surveys made from that point to the Missouri River prior to the submission of said proposition were for the purpose of determining the location of the road, and those made through Mills County were for the same purpose, and none other, and those made from Red Oak, or near that place, to Council Bluffs, were made for no other purpose. No lines were run west of Red Oak for the purpose of exciting the fears of the people of Mills County, or of inducing them to submit a proposition to the company. I never heard of any such thing. No scare or mock lines were run west of Red Oak for the purpose named; none that I know of. I don't know of any action taken by the company concerning the lawsuit that was then pending. The two principal reasons why the road was built through Mills County, and through Glenwood, were in order that we might utilize and secure the Nebraska land grant which had been made to the company, and that we might drain a wider country than we should if we built to Council Bluffs direct from Red Oak. It is impossible to estimate exactly and precisely what weight this proposition had in inducing the company to build its line through Red Oak and Mills County. I am unable to say now whether the company had determined to go through to Plattsmouth before this proposition was made or afterwards. The weight,

152 however, of this proposition would have been very slight in any event, as compared with the importance of building the line so as to connect with the Nebraska extension and of draining the widest country possible; in other words, this proposition from the county would not have determined the company in building to Plattsmouth if there had been no other inducements; my belief is it would not. The proposition was delivered to me at my office in the city of Burlington. I have no recollection of having had anything to do with arranging its terms. I can't state exactly when I first heard that a decree had been rendered in the suit pending in the Supreme Court of the United States, but it was after we had built the road.

Q. Can you state what the principal inducement was which led the company to accept that proposition?

(Objected to by plaintiff at the taking, and also at the hearing, as incompetent, irrelevant, and immaterial. No ruling.)

A. To compromise the lawsuit. I know of no other.

Cross-examination:

I mean to state that there was no other that I know of, and I think there was none that I did not know. I presume I knew the terms of the

contract. I signed it. I do not know of any of the inducements that were offered to Mills County to make this contract; it is possible that I may have at the time; I have no recollection of it. I have no recollection of the railroad company offering to build their railroad through Mills County via Glenwood, and to build a depot at Glenwood as an inducement for the contract. I am aware that such conditions are in the contract as a part of it, and I know that it provided that the suit then pending should be continued from term to term until the contract should be complied with, and I know that the proposition contained in the contract was not to be binding on Mills County unless the company should build its road through Mills County via Glenwood, and build a depot at Glenwood, and that in the event of the neglect or failure of the company so to do that the suit should stand for final hearing in the Supreme Court the same as if the contract had not been made. I said, in examination-in-chief, that the contract was a final settlement of the suit, provided we went on and complied with that condition; if
153 I have said anywhere otherwise I did not mean it; what I meant to be understood as saying was that it was a final settlement, provided both parties went on and complied with the contract. I don't know of any other considerations between the parties outside of the contract itself. I have been railroading some time, and know something of the object of railroad companies running lines, and have heard of railroad companies running lines for other purposes than that of finding a line for their road, but don't think my company has since I came here. From my experience in railroading I would say that the effect of running several divergent lines, upon the people along those lines, would be to stir up strife and emulation between those lines. I can't tell what lines the company did run; can't tell between what points either; can't give the time when they were run. The records are burnt up, and I don't know that they would show it either. I am now a director in the consolidated lines, the B. & M. and the C., B. & Q. Co's. There were lines run from Red Oak toward Council Bluffs, but whether they were run into the Bluffs or not I am unable to state. I suppose I did know at the time the proposition was made to me here in Burlington that the object of the committee and the object of the board of supervisors in making this proposition was to secure this line through Mills County and a depot at Glenwood, and that they were actuated in making this offer through a fear that if they did not make it we would go elsewhere, and that this was one of the inducements for making the offer. I must have known at the time that that was one of the objects that the committee and board had in view; the contract itself says so.

Redirect examination:

I suppose the B. & M. R. R. Co. continued to dispose of the lands after December 31st, 1872, because no formal transfer had been made to the C., B. & Q. R. R. Co. The line was run from Red Oak towards Council Bluffs for the purpose of determining its feasibility and cost; it was not run as a scare line for the purpose of exciting the fears of the people of Mills County with regard to the final location of the road. About that time an influential party in the board of directors suggested the con-
154 struction of the road direct from Red Oak to Council Bluffs. I was opposed to it for two reasons: First, that it would bring us nearer

to the Rock Island road, and limit the country tributary to our road; and, second, that it would prevent our making use of the land grant in Nebraska by an extension from Plattsmouth west. The arguments in favor of the line to Plattsmouth prevailed. At the time the proposition was accepted, and up to the time that the decision in the Fremont County case was announced, it was my expectation that we should succeed in the suit; and after the proposition was accepted the company went on in the execution of the same; and my recollection is that D. N. Smith was appointed on the part of the company to attend to the land matters.

Recross-examination:

Q. State now, Mr. Perkins, what effect, if any, this proposition, through the agents of Mills County, had upon your company as an inducement to build their road through Mills County and locate a depot at Glenwood.

A. I think the effect was very slight, and that the road would have been built there anyway on other considerations. My interest in the result of this suit is that of a small stockholder; I have 300 shares, worth $100 each.

Redirect examination:

Q. You stated on cross-examination that the inducement on the part of the company to build their road through Mills County afforded by the contract was very slight. I will get you to state whether or not the principal inducement in that matter was to compromise the litigation then pending.

A. It was the only inducement we had to compromise the litigation.

III. Deposition of W. W. PEET (Transcript, p. 953):

I have charge of tax matters in the land department of the C., B. & Q. R. R. Co. I superintend the payment of taxes on lands and keep a record thereof.

Q. Take this list and examine it (here witness was handed a paper
155 which is hereto attached, marked "Exhibit A") and state whether you have paid the taxes for 1874 on the same, and give all the particulars.

(To which question the pl'ff at the taking objected as incompetent, irrelevant, and immaterial, and the same objections were renewed on the trial. No ruling by district court.)

A. I will state that I did not pay the taxes for the year 1874 on the lands embraced in this list, but I tendered to Wm. Hoch, treasurer of Mills County, on the 9th of April, 1875, $514.13, in the legal currency of the United States in payment of the taxes for the year 1874, due on these lands, together with the accrued interest, and the treasurer refused to issue receipts in the ordinary form; I ascertained that this was the correct amount from the treasurer; I made the tender on behalf of the C., B. & Q. Co., and so stated to the treasurer; I did not pay the taxes for 1874, on the lands described in Exhibit B hereto attached, but did on the 2d of November, 1875, tender to the treasurer of Mills County, in legal currency of the United States, $345.61, but he refused to execute to me the receipts in regular form, and on the same day I tendered to the treasurer the further sum of $375.49, being the amount of taxes due on the list of lands for the year 1874, described in Exhibit C hereto annexed,

but he refused to execute to me receipts in the ordinary form; in each case I tendered the money, and asked the treasurer to take it, and to execute to me, as agent of the company, the tax receipts, which I presented in the ordinary form.

Cross-examination:

I left no money with treasurer on either of these occasions; when he refused to give me the receipts I demanded I took the money away with me; when I offered to pay, he said he would "take the money, and here are your receipts;" the receipts were not in the usual form; I demanded receipts without any qualification; the receipts offered me by the treasurer had these words added, "Received under protest; the board of supervisors has ordered me not to collect the above tax;" these were the only objectionable things in the receipts; the receipts were in the
156 usual form, except the above words; he told me he would receive the money, with the fact that the money was received under protest noted on the receipts.

Redirect examination:

On each occasion referred to in my examination in chief, before leaving the office, I told the treasurer that the railroad company was ready to pay the taxes at any time on delivery of tax receipts in the ordinary form.

Recross-examination:

I reported the facts above detailed to the railroad company soon after my return from Glenwood on each occasion.

157 EXHIBIT A.

List of unsold lands Nov. 1st, 1874, belonging to the C., B. & Q. R. R. Co. on which taxes for 1874 were levied by Mills County, and on which taxes for 1874 were tendered to Wm. Hoch, treasurer of said county, by said company April 9th, 1875, amounting to $514.13.

Part of section.	S.	T.	R.	Acres.	Total tax.	Part of section.	S.	T.	R.	Acres.	Total tax.
SW. SW	5	72	40	40	$4 40	SW. SW	"	"	"	"	2 40
NE. SW	6	"	"	"	4 40	NW. SE	"	"	"	"	2 37
NW. SW	"	"	"	37.04	4 07	SW. SE	"	"	"	"	2 37
SW. SW	"	"	"	37.64	4 10	NE. NW	2	"	"	28.58	2 57
SE. SW	"	"	"	40	4 40	NW. NW	"	"	"	28.25	2 57
SW. SE	"	"	"	"	4 40	SW. NW	"	"	"	40	3 60
SE. SE	"	"	"	"	4 40	NE. NE	3	"	"	27.98	2 39
SW. NW	7	"	"	39.09	4 29	SE. NE	"	"	"	40	3 37
SE. NW	"	"	"	40	4 40	NE. NW	"	"	"	27.75	2 30
W. h. SW. NE	2	71	41	20	2 70	NW. NW	"	"	"	27.65	2 29
SW. SW	"	"	"	40	5 40	SW. NW	"	"	"	40	3 17
SW. SE	9	"	"	"	5 84	SE. NW	"	"	"	"	3 17
SE. SE	"	"	"	"	5 84	NE. SE	"	"	"	"	2 80
NE. NW	11	"	"	"	5 41	NW. SE	3	71	43	40	$6 40
NW. NW	"	"	"	"	5 41	SW. SE	"	"	"	"	6 40
NW. NW	15	"	"	"	5 84	SE. SE	"	"	"	"	2 80
SW. NW	"	"	"	"	5 84	NE. NE	4	"	"	27.43	1 92
NW. SW	28	"	"	"	5 20	NW. NW	"	"	"	26.33	1 33
SW. SW	"	"	"	"	5 20	SW. SE	"	"	"	40	2 06
SE. NE	32	"	"	"	5 20	SE. SE	"	"	"	40	2 06
NW. SE	13	72	"	"	2 64	NE. NW	5	"	"	25.82	1 34
SW. SE	"	"	"	"	2 64	NW. NW	"	"	"	25.67	1 34
SE. NE	23	"	"	"	3 30	SW. NW	"	"	"	40	2 04
NW. NE	24	"	"	"	3 28	SE. NW	"	"	"	"	3 42
NW. NW	"	"	"	"	3 28	NW. NE	9	"	"	"	2 06
SW. NW	"	"	"	"	2 48	NE. NW	"	"	"	"	1 99
SE. NW	"	"	"	"	2 48	NW. NW	"	"	"	"	1 99
NE. SW	"	"	"	"	3 02	NE. NW	10	"	"	"	7 20
NW. SW	"	"	"	"	3 02	SE. NW	"	"	"	"	7 20
NE. SE	26	"	"	"	3 44	NE. NE	18	"	"	"	2 76
NW. SE	"	"	"	"	3 44	NE. SE	20	"	"	"	3 10
SW. SE	"	"	"	"	3 44	NW. SE	"	"	"	"	3 10
NW. SW	1	71	43	"	2 40	SE. SE	"	"	"	"	2 48

EXHIBIT A—Continued.

Part of section.	S.	T.	R.	Acres.	Total tax.	Part of section.	S.	T.	R.	Acres.	Total tax.
NW. NW	28	"	"	"	2 08	SW. NE	"	"	"	"	2 70
SW. NW	"	"	"	"	2 08	SE. NE	"	"	"	"	2 70
NW. SW	"	"	"	"	2 08	NE. SE	"	"	"	"	2 94
NE. SE	29	"	"	"	1 90	NW. SE	"	"	"	"	2 94
NE. SE	32	"		"	2 16	SW. SE	"	"	"	"	2 94
SE. SE	"	"	"	"	2 16	SE. SE	"	"	"	"	2 94
NE. SE	34	"	"	"	1 35	NW. NW	32	"	"	"	2 94
SE. SE	"	"	"	"	1 08	SW. NW	"	"	"	"	2 94
NW. SW	35	"	"	"	1 16	SE. SW	"	"	"	"	2 94
SW. SW	"	"	"	"	1 16	NE. NE	33	"	"	"	9 80
SE. SW	"	"	"	"	1 08	NW. NE	"	"	"	"	4 90
SW. SE	"	"	"	"	2 48	NE. NW	"	"	"	"	4 90
NE. NE	5	72	"	31. 03	1 96	NW. SW	"	"	"	"	7 20
NE. SW	17	"	"	40	4 90	SW. SW	33	72	43	40	$7 20
NW. SW	"	"	"	"	"	SE. SW	"	"	"	"	7 20
SW. SW	"	"	"	"	"	SW. SE	"	"	"	"	4 90
SE. S W	"	"	"	"	"	SE. SE	"	"	"	"	4 90
NW. SE	"	"	"	"	"	NE. SW	17	73	"	"	2 80
SW. SE	"	"	"	"	"	SE. SW	"	"	"	"	2 80
SE. SE	"	"	"	"	"	NW. NE	18	"	"	"	1 09
SE. NW	19	"	"	"	"	SW. NE	19	"	"	"	1 48
NE. NE	20	"	"	"	"	NW. NW	"	"	"	40. 30	1 30
NW. NE	"	"	"	"	"	SW. NW	20	"	"	40	2 58
SW. NE	"	"	"	"	"	SE. NW	"	"	"	"	2 58
SE. NE	"	"	"	"	"	NW. SW	"	"	"	"	4 60
NE. NW	"	"	"	"	"	SW. SW	"	"	"	"	4 60
158 NW. NW	20	72	43	40	4	NE. NE	30	"	"	"	1 24
SW. NW	"	"	"	"	4 90	SW. NE	"	"	"	"	1 24
SE. NW	"	"	"	"	4 90	NE. SW	"	"	"	"	1 24
NE. SW	"	"	"	"	4 90	NE. NE	12	72	44	"	1 96
NW. SW	"	"	"	"	4 90	NE. NW	"	"	"	"	1 25
SW. SW	"	"	"	"	4 90	SE. NW	"	"	"	"	1 25
SE. SW	"	"	"	"	4 90	SE. SW	"	"	"	"	1 25
SE. SE	"	"	"	"	4 90	SW. SE	"	"	"	"	1 25
NW. SW	27	"	"	"	7 34	NW. NE	13	"	"	"	1 96
NE. NE	29	"	"	"	2 94	SW. NE	"	"	"	"	1 96
NW. NE	"	"	"	"	2 94	NE. NW	"	"	"	"	1 96
SW. NE	"	"	"	"	2 94	NW. SE	"	"	"	"	2 94
SW. SE	30	"	"	"	2 94	NE. NE	36	"	"	"	2 94
NE. NE	31	"	"	"	2 70	NE. SE	"	"	"	"	2 80
NW. NE	"	"	"	"	2 70	NE. NE	"	73	"	"	1 04
						Total					$514 13
						Deduct for SE. NE. 5, 72, 43, not swamp land					2 94
											$511 19

Amount due, $521. 41.

159

EXHIBIT B.

List No. 1, *showing lands upon which the taxes of* 1874 *were unpaid November* 2*d*, 1875 *and on which the sum of* $545.66 *was tendered in payment of same.*

Part of section.	S.	T.	R.	Taxes levied.	Part of section.	S.	T.	R.	Taxes levied.
NE. NE	7	72	40	$12 60	E. h. SW	33	71	41	$8 00
SE	4	73	"	32 90	NE	26	72	"	10 56
W. h. NE	9	"	"	7 52	N. h. SE	"	"	"	6 88
SW	"	"	"	21 31	SW. SE	"	"	"	3 44
NW	10	"	"	17 28	NW. NE	1	73	42	6 02
S. h. SW	21	"	"	7 68	E. h. NE	1	71	43	4 16
S. h. SE	"	"	"	7 68	W. h. SW	17	"	"	6 57
SW. SW	22	"	"	5 80	SE. SW	"	"	"	2 76
W. h. SE	28	"	"	12 20	SW. SE	"	"	"	2 76
NE. NE	31	"	"	2 72	SW. NE	34	"	"	1 24
W. h. NE	"	"	"	5 44	NW. NW	"	"	"	2 48
S. h. NW	"	"	"	6 60	NW. SE	"	"	"	1 35
SW. SW	10	71	41	5 85	SW. SE	35	"	"	2 48
W. h. SW	28	"	"	10 40	SE. SW	26	72	"	3 96
SE. SE	31	"	"	5 33	W. h. NW	29	"	"	5 88
SE. NE	32	"	"	5 20	W. h. NW	33	"	"	9 80
S. h	"	"	"	45 28	NE. NW	20	73	"	2 80
									$292 93
					Accrued interest (18 per cent.)				52 73
					Total tendered				$345 66

160 EXHIBIT C.

List No. 2, showing lands upon which purchasers from the R. R. Co. had offered to pay the taxes for 1874, and had received from the county treasurer receipts with the words "Received under protest" added to such receipt, and on which the sum of $375.49 was tendered Nov. 2, 1875.

Part of section.	S.	T.	R.	Taxes levied.	Part of section.	S.	T.	R.	Taxes levied.
N. h. NE	5	72	40	$10 75	E. h. SW	29	73	40	$7 04
SW. NE	"	"	"	3 60	SE	"	"	"	10 88
E. h. NW	"	"	"	7 37	SE. SW	15	71	41	4 64
E. h. SE	7	"	"	8 80	W. h. SE	"	"	"	9 72
SW	8	"	"	17 60	W. h. NE	28	"	"	10 46
E. h. NE	17	"	"	9 60	SE. NW	"	"	"	4 00
N. h. NE	19	"	"	6 46	E. h. SW	29	"	"	10 40
E. h. NE	4	73	"	8 93	W. h. SE	"	"	"	10 40
W. h. SW	14	"	"	17 28	SW. SW	33	"	"	5 20
NW. SE	17	"	"	3 52	E. h. SE	"	"	"	11 34
N. h. NE	21	"	"	9 60	NW. NW	13	73	42	8 94
S. h. NE	"	"	"	9 60	W. h. SE	19	"	"	10 40
N. h. SE	"	"	"	7 58	W. h. SW	29	72	43	5 88
N. h	28	"	"	43 92	E. h. NW	17	73	"	12 00
N. h SW	"	"	"	9 76	E. h. SW	"	"	"	3 20
NE. NE	29	"	"	2 72	W. h. NE	1	72	44	4 29
S. h. NE	"	"	"	6 24	NW. NW	35	"	43	3 77
SE. NW	"	"	"	2 72					
									$318 21
Accrued interest (18 per c't.)									57 28
Total amount tendered									$375 49

161 IV. Deposition of A. E. TOUZALIN (Transcript, p. 962):

I have been land commissioner of the C., B. & Q. R. R. Co. for a year and a half; from Dec. 31st, 1872, to Jan. 31st, 1875, the lands have been disposed of in the name of the B. & M. R. R. Co., but for the benefit of the C., B. & Q. R. R. Co., and the moneys received have come into the hands of the treasurer of the latter company; on December 31st, 1875, the B. & M. R. R. Co. gave the C., B. & Q. R. R. Co. a perpetual lease of its assets, including lands; the lease looks forward to an adsolute transfer and deed to be made, which was made July 31st, 1875; since that date the business has been done in the name of the C., B. & Q. R. R. Co.; the paper now shown me, Exhibit A, hereto annexed, is the original lease and agreement above referred to (for copy see Abstract, pp. 50–'4); the other paper shown me is the original compromise of the suit between Mills County and the B. & M. R. R. Co., and is attached by a copy to answer of C., B. & Q. R. R. Co. as Exhibit C (for copy see Abstract, pp. 21–'3); after the execution of the lease of December 31st, 1872, the C., B. & Q. R. R. Co. took possession of the property, both lands, assets, and moneys of the land department, consisting of about 180,000 acres of land, $2,000,000 of bills receivable, and notes, and exactly $112,987.88 in money.

V. Deposition of J. M. WALKER (Transcript, p. 1044):

I am president of the C., B. & Q. R. R. Co.; was such president December 31st, 1872, and prior thereto, and had much to do with making the lease of that date with the B. & M. R. R. Co. I prepared it myself, and executed it on the part of company. I supposed at that time and believed that the lands in controversy constituted a part of the grant of May 15th, 1856, made to the State of Iowa, and by the State of Iowa to the B. &

M. R. R. Co., to aid in the construction of that road. I did not know that Mills County claimed them; no information was given the board of directors of any outstanding claim thereon by Mills County or by any other person; the corporation supposed and believed, so far as
162 I know, and so did I at the time of making such lease, that a complete and perfect title was being acquired to those lands.

Motion to suppress portions of deposition filed. No ruling by district court.

VI. Deposition of HENRY STRONG (Transcript, p. 1050):

I was counsel for def't in the former action in this court, wherein Mills County, Iowa, was pl'ff and the B. & M. R. R. Co. was def't. The litigation in that case involved a claim by Mills County of certain lands as swamp lands, and by the railroad company as lands granted by the United States to the State of Iowa, and by the State to said railroad company to aid in the construction of that road. The cause was tried in the district court of Mills County and decided in favor of Mills County; an appeal was taken to the supreme court of Iowa and judgment affirmed; an appeal was taken from that decision to the Supreme Court of the United States at Washington. It is my present recollection that both the Fremont and Mills County cases against the railroad company were pending on appeal in the Supreme Court at Washington at the time the Mills County case was compromised, on the 13th of July, 1868. After the agreement of compromise nothing was done except that the railroad company conveyed certain lands to the county, and the county conveyed certain other lands to the railroad company. I did not receive or deliver these deeds, but understand that such conveyances were made; this left the $10,000 to be paid by the county to the company; no attention was thereafter given by counsel for def't to the case, as the matter was supposed to be compromised.

Cross-examination:

I cannot remember whether or not any briefs were filed for the railroad company in the Supreme Court of the United States in the Mills County case. I know that such were filed in the Fremont County case. The two cases involved substantially the same questions of law. My recollection is that at the time of filing the argument in the Supreme Court at Washington the Mills County suit had been compromised, although I am not certain as to dates, but I am certain that before the hearing at Washing-
163 ton the Mills County case had been settled and compromised; the same argument was made and the same briefs filed by counsel for def't in both cases, as I recollect.

(Motion to suppress portions of deposition. No ruling by district court.)

VII. Deposition of H. A. COPELAND (Transcript, p. 1067):

I reside in Dakotah Territory; the paper now handed me, which I mark Exhibit A, is a copy of a proposition of compromise of a lawsuit between Mills County and the B. & M. R. R. Co. For copy of this exhibit see Abstract, pp. 21–'3); I was clerk of the board of supervisors of Mills County, and as such filed, signed, and certified to papers officially, including this proposition; after it was accepted, I was employed and acted

for the railroad company in conjunction with Mr. Simons, of Red Oak, to make an abstract of the swamp land record of Mills County, showing what action the county had taken as to each tract of swamp land; I think I made this abstract while I was clerk; I did it at the request of the railroad company; gave it to them and they paid me for the work; in January, 1869, my term as clerk expired, when I was employed by the railroad company, generally to look after the interests of the company, and especially their land affairs, and so continued until deeds were exchanged; D. N. Smith and myself acting for the company and H. C. Watkins and William Hale for the county; we went over the whole record to determine and pass upon such pre-emptions as were fraudulent and such as were valid; we arranged the lands in separate lists, and all the even numbered sections not sold by the county and all the odd numbered sections not sold by the county on which there were no valid pre-emptions were conveyed by the county to the railroad company, and all the odd numbered sections which had been sold by the county were released to the county by the railroad company; the odd numbered pre-empted lands were to be conveyed by the railroad company to the pre-emptors on payment for same; this was regarded by both parties as a final adjustment of the whole matter;

it was inaugurated by the county supervisors for the purpose of
164 settling a lawsuit quieting the title to citizens' farms, and securing the construction of a railroad through the county; many prominent citizens of the county had become quite impatient about their homes, the title to which was involved in this suit, and a heavy pressure was brought to bear on the board by parties, especially who lived on the bottom lands, demanding a settlement of the suit; and the committee which was sent to Burlington was instructed by the board of supervisors to settle the suit if possible; my means of knowledge is that I was engaged in the adjustment of this contract all the time in the interest of the railroad company.

No cross-examination by pl'ff.

(Motion to suppress portions of deposition. No ruling by district court.)

VIII. Deposition of D. N. SMITH (Transcript, p. 1090):

In 1868 I was authorized by C. E. Perkins, of the B. & M. R. R. Co., to assist in adjusting a suit between Mills County and the railroad company; I conveyed written notice to the county that the company had accepted the proposition, and secured the written acknowledgment of the officers of Mills County that they had been served with notice of such acceptance; Exhibit A to my deposition is a copy of the paper upon which I obtained such acknowledgment from the officers of Mills County.

(For copy of exhibit see Abstract, pp. 21 and 23.)

Q. 4. (Transcript, p. 1092.) You may now state fully and in detail each and every step you took, as the authorized agent of said railroad company, concerning the settlement and adjustment of said contract between the company and the county.

(To which question, and the answer thereto, pl'ff, on the trial, objected in writing as incompetent and immaterial. No ruling by the district court.)

A. I employed Copeland, of Glenwood, and Simons, of Red Oak, to act with Hale and Watkins, a committee of Mills County, in examining swamp land records and plats for the purpose of ascertaining what lands Mills County had sold to bona fide settlers, what pre-emptions were valid and what fr'udulent, what lands the company were entitled to on the terms of the
165 contract submitted above. Hale and Watkins submitted to me a proposition with a list of 2,040 acres of swamp lands, asking that the railroad company agree that Mills County had sold and should reserve the same under the contract given above; finding some errors in this list, I did not agree to their request; as land agent of the company I gave the county a bond to deed to the county 560 acres of swamp land (designated by numbers) under this contract. Exhibit B, hereto annexed, is a copy of an obligation as land agent given by me to Mills County. On the 14th of March, 1870, I sent by mail to H. A. Copeland four deeds which the railroad company had executed under said contract; a true copy of my notes made the day that said deeds were sent is attached hereto as Exhibit C. I now hold two copies of my reports to George A. Harris, land commissioner of the B. & M. R. R., true copies of which I now hand to the notary to be attached to my deposition, marked Exhibits D and E.

Q. 5. Besides ascertaining who were bona fide purchasers and pre-emptors from the county, what was done by the joint committee?

(To which question, and the answer thereto, the pl'ff on the trial objected in writing as incompetent and irrelevant. No ruling by the district court.)

A. The joint committee made up what we called "agreed lists" of lands—that is, complete lists of such lands as the county should deed to the railroad company, and such as the railroad company should deed to the county, and such as either party should deed to pre-emptors or bona fide purchasers; this joint committee also agreed upon and drew up the forms of deeds which should be used in conveying lands under the contract.

Q. 6. State whether or not the board of supervisors executed deeds to the company, or whether or not the company executed deeds to the county and individual claimants.

(To which question, and the answer thereto, pl'ff on the trial objected in writing as incompetent and irrelevant. No ruling by district court.)

A. The board did execute deeds to the company, and the company
166 did execute deeds to the county and to individual claimants in precise accordance with the results reached in the "agreed lists" by the joint committee.

Q. 7. You may now state how and in what manner the parties to the contract of compromise treated the same so far as you know.

(To which question, and the answer thereto, the pl'ff on the trial objected in writing as incompetent and irrelevant. No ruling by the district court.)

A. So far as I know the parties to the contract of compromise treated the same in perfect good faith, and were well satisfied with the results reached and the agreements executed by the joint committee.

(No cross-examination by pl'ff.)

NOTE.—Before the trial commenced the pl'ff filed written objections to interrogatories 4, 5, 6, and 7 in chief, propounded to said witness D. N. Smith, and to the answer thereto, and to the several exhibits referred to

in said answer, including Exhibits B, C, D, and E, next following this note, upon the ground of incompetency and irrelevancy.

(There was no ruling by the district court on said objections, and no waives thereof by the pl'ff.)

EXHIBIT B.

Know all men by these presents that for and in consideration that the county of Mills, Iowa, have and do on this 4th day of January, 1870, in furtherance of the settlement of the swamp land suit between the county of Mills and B. & M. R. R. Co., conveyed by deed all the right of the said county of Mills in and to the following described real estate, situate in the said county of Mills, to wit:

Here follows the description of 1,760 acres of land, after which is written as follows:

The said B. & M. R. R. Co. does hereby agree with and assure the said county of Mills that the said company will at all times and under all circumstances save the said county harmless on account of any bargains or pretended bargains to sell any or all of the lands above described made heretofore by the said county or any of her officers, and also against any claim or right whatsoever that may hereafter be set up to any of the aforesaid lands by any person whomsoever, founded upon any contract or agreement or pretended contract or agreement made with the said
167 county of Mills or any of the officers of said county; and the said railroad company do further agree that the said railroad company will carry out in good faith on their part any lawful agreement heretofore made by the said county, or lawfully made by her officers for the sale of any of the aforesaid lands.

NOTE.—No signature to exhibit.

EXHIBIT C.

March 1st, 1870, mailed to H. A. Copeland, Glenwood, Iowa, the following-described deeds from the B. & M. R. R. Co. to be delivered as per agreement with Hale and Watkins:

To H. E. Veits, E. ½ of SW. ¼ sec. 29, 71, 43, $100 due.
To H. W. Summers, E. ½ of NW. ¼ sec. 33, 71, 41, $100 due.
To H. C. Watkins, E. ½ of SW. ¼ sec. 1, 73, 42, $100 paid.
To D. C. Briggs, NE. ¼ of NW. ¼ sec. 31, 73, 42, $50 paid.
Charged Copeland to collect.

EXHIBIT D.

BURLINGTON, IOWA, *Oct. 5th*, 1870.

GEORGE S. HARRIS, *Land Commissioner of B. & M. R. R.*:

DEAR SIR: Enclosed please find one deed from B. & M. R. Co. to Mills County for some 1,920 acres of swamp land, and also one deed to Josiah Wearin for some 280 acres of swamp land. Mills County, by her board of supervisors, has executed a deed to the B. & M. R. R. Co. for 3,480 acres, which deeds are now on deposit to be delivered to us whenever the enclosed deeds are properly executed and returned to them.

So far as I am able to find anything of record this passing of deeds

closes up our complicated swamp land contract with Mills County, including all pre-emptions, taking the county record as our guide. We have included in their deed for 3,480 acres of land, all that the railroad company are entitled to under their contract with the county. By referring to my letter accompanying deeds, last January, you will notice that to fully secure the interest of the railroad company some lands were deeded to the railroad company which the company agreed to deed back to citizens of the county; this was done to get the title out of the county, save litigation, and allow us to make the best possible arrangement with citizens.

The 280 acres to Josiah Wearin was included in our agreement to deed.

Yours, respectfully,

D. N. SMITH.

168 EXHIBIT E.

BURLINGTON, IOWA, *Dec. 16th*, 1870.

GEORGE S. HARRIS, Esq., *Land Commissioner B. & M. R. R.:*

DEAR SIR: At the request of your Mr. Mason, I herewith hand over a book containing a certified copy of the contract between Mills County and the B. & M. R. R. Co., also, the written statements taken on cases of pre-emption on swamp lands in Mills County. You will see by referring to the contract that the county offered as lands not sold about 9,080 acres, 4,660 acres pre-empted, one-half of which was supposed fraudulent, 2,330 acres; total amount as near as they could estimate it, 11,410 acres. County has deeded to railroad company, October, 1869, 11,645½ acres.

Respectfully submitted,

D. N. SMITH.

IX. Deposition of DAVID RORER (Transcript, p. 1097):

My name is David Rorer; I have attained long since my majority, and am a resident of Burlington, Iowa; I was one of the counsel for railroad company in a case instituted in the district court of Mills County, Iowa, wherein Mills County was pl'ff and the B. & M. R. R. Co. was def't; the records, I suppose, will show what the case was about; I know it was concerning land.

Q. State whether or not said cause was appealed from the inferior to the higher courts, and if appealed more than once, state the court to which it was last appealed.

A. It last went to the Supreme Court of the United States, but whether by appeal or writ of error I do not remember certainly.

Q. State whether or not the said suit was compromised between the parties thereto, and if so, state in what court the same was pending at the date of said compromise.

A. In answer to so much of the question as refers to a supposed compromise, I never had any personal knowledge of the making thereof; I have an indistinct recollection of hearing it said that some arrangement or partial compromise was made, but I know nothing personally of the making thereof, and was not present and had no hand in making it; in answer

to the rest of the question, I will say that not knowing the date of the
169 supposed compromise, I cannot state where the case was at that date;
I suppose by referring to the date of the compromise (if there was a written one), and to the records of the suit in the different courts it could be ascertained where the suit was at that date.

Q. 5. State what was done by the counsel for def't in said cause in respect to any further attention to the same after the said compromise was effected.

A. Not knowing when the supposed compromise was effected (if there was one), what its date was, I am unable to say what was done after that date. But whatever was done in court, if anything, after that date, I suppose will there appear, and whether done after or before, will appear by reference to the date of compromise, if there is one in writing.

Q. 6. State whether or not anything was done in said cause by the def't or its counsel after said compromise was agreed to, and, if you say anything was done, state what it was.

A. Don't know the date of the compromise (if there was one).

No cross-examination by pl'ff.

In answer to cross-interrogatories filed by the clerk, witness said:

1st. I am a stockholder in one or both of said railroads.

2d. All my statement to the foregoing answers which refer to my residence, and to my name, and to my being of counsel in said cause, and to the suits being about land, and to my hearing something about a compromise, and about the suit going to the Supreme Court of the United State', when I was myself attending to it at one time, and as to my being a stockholder in at least one of said roads, are of my personal knowledge. The residue of my answers I think sufficiently show the character in which it is made.

3d. I don't recollect anything more except how the cause was decided at Washington, and that I learned from the printed report thereof, and from common repute, and if otherwise, don't recollect.

170 X. Deposition of J. M. FORBES (Transcript, p. 1124):

I was elected director of B. & M. R. R. Co. in March, 1857, and have so continued ever since. I don't recollect with certainty whether the board of directors ordered a survey through or near Mills County, but have no doubt they did so order, and for the purpose of getting the best line. I have no knowledge or belief that any of the lines were run as scare lines, or for the purpose of creating a fear in the minds of the people of Mills County as to where the lines would run; the one from Red Oak towards Council Bluffs was run for the purpose of finding the most feasible route.

Cross-examination:

Teilson was chief engineer of the railroad company, and surveyed the lines through or near Mills County in 1868. It is impossible for me to state what lines were run in 1868; I was not personally present. I understand a scare line to be run for the purpose of misleading some person or persons, and not for bona fide purposes of railroad building. I can't state anything as to the apprehension of the people out there occasioned by the

running of these lines. I can't state from my own knowledge that the running of the line from Red Oak to Council Bluffs in 1868 did not lead the people of Mills County to fear that the road would be constructed on that line. I don't know what was said to the people of Mills County as to the purpose for which said line was run. I am interested in the result of this suit as a stockholder. I cannot state what influence the proposition for a contract, dated July 13th, 1868, had in causing the road to be built through Mills County, via Glenwood, but with the strong influence that existed in the board in favor of the Council Bluffs route, I have no doubt but it had great influence; I do not now swear that, but for this proposition, the road would have been built to Council Bluffs. I was one the trustees of the mortgage given by the B. & M. Co. to secure certain bonded indebtedness, but resigned in 1872.

XI. Deposition of W. H. TAFT (Transcript, p. 1145):

I am auditor of Mills County.

171 Q. Have you in your possession any deeds made by railroad company to Mills County, in pursuance of the settlement and adjustment of the settlement made between Mills County and the B. & M. R. R. Co. in 1868; if yea, state how many, and will you produce them and attach copies?

(Question objected to on the taking, and at the trial, as incompetent and immaterial. No ruling by district court, and no waiver by pl'ff.)

A. I here produce two deeds, and mark them A and B.

Exhibit A to W. H. Taft's deposition (Transcript, p. 1160).

For the consideration of one dollar, and for the purpose of carrying out the terms and stipulations of a contract made with Mills County, in the State of Iowa, the B. & M. R. R. Co. does remise, release, and forever quitclaim to said Mills County, in the State of Iowa, the following described lands, situated in the county of Mills and State of Iowa, to wit:

Description.	S.	T.	R.
NW NW	5	72	40
W. h. NW	17	"	"
S. h. NE	19	"	"
E. h. NW	1	73	"
W. h. of W. h	3	"	"
NE. SE	11	"	"
S. h. SE	"	"	"
SE. NE	15	"	"
NW. q	"	"	"
SE. q	"	"	"
S. h. SE	17	"	"
N. h. SW	22	"	"
NW. NW	29	"	"
SE. q	31	"	"
SE. SW	"	"	"
S. h. NE	9	71	41
N. h. SE	"	"	"
SW. NW	17	"	"
W. h. SW	"	"	"
NE. q	25	"	"
E. h. SE	"	"	"
NE. NE	17	"	"
SW. q	21	"	"
E. h	"	"	"
NW. q	27	"	"
W. h. SW	"	"	"
SE. SW	"	"	"
E. h. NW	29	"	"
E. h. E. h	"	"	"
W. h. E. h	33	71	41
N. h. NW	"	"	"
SE. SE	1	72	"
SE. NW	19	"	"
SW. SE	"	"	"
E. h. NW	23	"	"
SW. q	"	"	"
W. h. SE	"	"	"
N. h	25	"	"
E. h. SW	"	"	"
NE. q	27	"	"
E. h. SE	"	"	"
SW. q	29	"	"
NW. NW	35	"	"
W. h. NW. SW	"	"	"
S. h. SW	"	"	"
SE. q	"	"	"
SW. SW	19	73	"
S. h. NE	1	"	42
W. h. SW	"	"	"
N. h. SE	"	"	"
NE. q	5	"	"
E. h. SW	5	"	"
E. h. E. h	11	"	"
E. h. NW	19	"	"
SW. NE	31	"	"

Description.	S.	T.	R.
SW. q	3	71	43
NE. NE	9	"	"
SW. NW	"	"	"
172 S. h. SE	9	71	43
NE. NW	11	"	"
NE. NE	19	"	"
NW. NE	21	"	"
E. h. NW	"	"	"
SW. NW	27	"	"
SW. SW	"	"	"
E. h. NE	29	"	"
W. h. SE	"	"	"
N. h. NE	33	"	"
SE. NW	"	"	"
E. h. SW	"	"	"
NW. SE	"	71	43
S. h. SE	"	"	"
W. h. NE	5	72	"
NW	"	"	"
W. h. SW	"	"	"
SE. SW	"	"	"
SW. NW	7	"	"
NE. SE	17	"	"
NE. NW	19	"	"
W. h. NW	"	"	"
N. h	21	"	"
SW. q	"	"	"
SW. SW	23	"	"
E. h. NE	27	"	"
SW. SW	27	72	43
NE. SE	"	"	"
E. h. W. h	29	"	"
W. h. SE	"	"	"
SE. NE	33	"	"
SE. NW	"	"	"
NE. SE	"	"	"
NE. NW	35	"	"
S. h. NW	"	72	43
SE q	"	"	"
SE. NE	19	73	"
W. h. E. h	31	"	"
E. h. NE	1	72	44
W. h. NW	"	"	"
SE. NW	"	"	"
N. h. SW	"	"	"
SW. SW	"	"	"
NE. SE	"	"	"
W. h. NE	25	"	"
E. h. NE	13	73	"
NE. SE	"	"	"
E. h. NW	35	"	"
NW. NW	"	"	"
NE SW	"	"	"
W. h. SE	"	"	"

Containing in all 9,340 acres, be the same more or less; in witness of which the said grantor hath hereto set its seal, and caused these presents to be signed by its treasurer, and countersigned by its land agent, this 13th day of October, 1869.

J. N. DENNISON, *Treasurer.*
J. W. AMES, *Land Agent.*

[SEAL.]

Duly acknowledged.

To which deed is attached the release of John N. A. Griswold and H. P. Kidder, trustees, of same date with deed, and substantially in same form as found on p. 70 of Abstract.

173 *Exhibit B to W. H. Taft's deposition, being a quitclaim deed dated January 30th, 1871, executed by the same grantors to the same grantee, duly acknowledged and having substantially the same release of the trustees thereto, and describing the following lands:*

Description.	S.	T.	R.	Description.	S.	T.	R.
NW. NE	29	73	40	W. h. NW	17	71	43
SW. NW	"	"	"	W. h. NE	29	"	"
NE. NW	"	"	"	S. h. NE	33	"	"
NW. SW	"	"	"	NE. SE	"	"	"
N. h. NW	31	"	"	SE. q	21	72	"
N. h. NE	9			SW. NE	27	"	"
W. h	"	71	41	NW. q	"	"	"
W. h. NE	27	"	"	E. h. SW	"	"	"
NW. SE	"	"	"	NW. SE	"	"	"
NE. SW	"	"	"	S. h. SE	"	"	"
NW. SW	29	"	"	SW. SE	1	"	44
SE. NW	33	"	"	SE. SW	"	"	"
NE. SW	35	72	"	NE. SW	13	"	"
E. h. NW. SW	"	"	"	NE. SW	25	"	"
NE. q	"	"	"	NW. SE	"	"	"
N. h. NE	"	73	42	Lot 1	27	73	"
NW. SE	31	"	"	SW. NW	35	"	"
N. h. S. W	9	71	43	SW. q	15	"	40
SE. NW	"	"	"	NW. q	21	"	"
NW. NW	11	"	"				

XII. Deposition of H. C. WATKINS (Transcript, p. 1146):

My occupation is that of a lawyer; I think I was appointed in connection with Wm. Hale; at all events I so acted in adjusting the contract between Mills County and the railroad company, and prepared lists of swamp lands for the purposes of transfer as between the railroad and the county; we acted for the county and D. N. Smith and H. A. Copeland for the railroad company. Exhibit C to the answer of the C., B. & Q. (for copy of which see Abstract, pp. 21–23) is the contract which we were appointed to adjust and carry out. I spent at least two months' time at it. The lists were reported to the board and deeds executed in accordance therewith. The contract, so far as known to me, was treated by the board simply as the instrument it purports to be. I should judge that prior to the making of the contract Mills County had sold or contracted to sell most of the lands in controversy, and many of the lands so
174 sold were actually occupied by settlers, and in proportion as the owners of the land in controversy had or had not confidence in the final result of the suit they manifested solicitude as to the result thereof.

Cross-examination:

I have practiced law in Glenwood since 1864. At the commencement of this suit Watkins & Williams, attorneys, of which I am a member, were of counsel for railroad company in a case against Jackson, which is still pending, the issue of which is substantially the same as in this case. Being retained in that case I would not feel at liberty to be of counsel for pl'ff in this case. I do not know that I was active at the election at which the proposition was submitted to the voters of Mills County. I was in favor of the proposition, but was not employed or paid by any one. I think I signed and got others to sign a circular addressed to the people of Mills County, urging them to vote in favor of ratifying the proposition referred to above. I think the securing of a railroad through Mills County, via Glenwood, was in our minds, as citizens, and also expressed in the proposition itself, and that there was solicitude that the road should

run through the county; and fears were entertained, whether general or not I will not say, that the road might not finally be built on that route. The reasons which operated to produce this fear in the minds of the people, as I recollect them, were, the road was not here; it was not here and running; surveying parties, which I understood were in the employ of the company, were looking up different routes across the county for the purpose of ascertaining where the road would be built. I cannot safely say further what aroused people's fears, because I don't know.

Redirect examination:

My recollection is that not long before the proposition was submitted and agreed to there were surveying parties sent out by the railroad company, and different routes were run. One route I remember was down Burger Hollow and another up Mud Creek.

175 XIII. Deposition of B. F. BUFFINGTON (Trans., 1183).

I live in Glenwood, and for six or seven years have been engaged in merchandizing and grain dealing; have lived in the county twenty years; was a member of the board of supervisors from 1869 to 1872; the contract of which Exhibit C to the answer of the C., B. & Q. is a copy, as I understood it, was regarded as a compromise and final settlement of the matter; the deeds that the county made were executed to the railroad company; I can't say whether all the deeds made by the company were to the county or some to individuals.

Cross-examination:

While I was a member of the board the B. & M. R. R. Co. demanded of the board of supervisors the money ($10,000) which they claimed under the instrument referred to as Exhibit C above; I don't know the date; I think it was before the vote was taken; I cannot tell how the demand was made; the board ordered the submission of the matter to the people at an election; I understood that one of the purposes in the instrument, Exhibit C, was to secure the building of a railroad through Mills County via Glenwood; I was not a member of the board at the time the contract was made; when it was submitted to the people for their vote at an election it was rejected.

Redirect examination:

My recollection is that when the vote was taken the railroad company had deeded most if not all the lands it had agreed to under the contract, and I understood that the railroad company had fulfilled the conditions of the contract on their part, and so far as I know this was the understanding of the board; the order by the board of supervisors submitting the contract to a vote of the people was made, I think, at the June session, 1871.

Recross-examination:

The board of supervisors had no authority for making the deeds for the swamp lands in controversy other than the pretended contract, that I know of; as a member of the board I should not have consented to deed any of the lands to the railroad company without a full compliance on the
176 part of the railroad company with the condition mentioned in the contract, to wit, building the road through Mills County and a depot at Glenwood; at the time of deeding the lands to the railroad company the contract had not been submitted to a vote of the people, nor au-

thorized by a vote of the people; I was a member of the board at the time the contract was submitted to a vote and rejected in the fall of 1871; the record here shown me is the record of the canvass of the vote of 1871; I find a line written across this page and book which reads, "for ratifying the contract with the B. & M. R. R. Co., 1,031 votes case; against ratifying, 357," which is incorrect, because the majority was largely against ratifying the contract; I think, if I state anything, that the figures named are simply transposed; the vote was largely against ratifying the contract.

(Here the witness attached a copy of the record of said election as Exhibit D. For copy of so much of same as relates to the vote on the contract see Abstract, p. 78.)

At the time of executing the deeds by the county to the railroad company I was shipping grain principally to Chicago over the B. & M. and C., B. & Q. Railroads; I made some shipments to Kansas City and points in Nebraska.

Re-examination:

The fact of my being a shipper over the def't's roads had nothing whatever to do with my statements in this disposition or with my action in adjusting the contract.

XIV. Deposition of BENNETT CREECH (Transcript, p. 1201).

I was a member of the board of supervisors of Mills County from January, 1869, to fall of 1872, and during the adjustment of the contract between Mills County and the railroad company. (For copy of contract referred to see Abstract, pp. 21–'3.) As I understood it, this contract was treated by the board as a settlement and adjustment of the swamp land question between Mills County and the railroad company; deeds of swamp lands were made by Mills County to the railroad company, and by the railroad company to Mills County in pursuance of this contract.

177 Cross-examination:

I was not a member in 1868, at the time the contract was made and agreed to. This contract also provided for the railroad through Mills County via Glenwood, and the building and maintaining of a depot at Glenwood. It further provided that if the railroad company should fail in these particulars, then that the contract should be as though never made. In the fall of 1871 this proposition or contract was submitted to a vote of the people. All the deeds above referred to had been executed prior to the time the proposition was ordered submitted to a vote of the people. The question was never submitted to a vote but once, and that was in the fall of 1871. I was a member of the board at the time such vote was taken, and took part in the canvass of the vote; the majority of the votes cast was opposed to the contract or compromise. The book here shown me is the official record of the canvass of that election; that part of the entry reading "For ratifying the contract with the B. & M. R. R. Co., ten hundred and thirty-one (1,031) votes cast; against ratifying, three hundred and fifty-seven (357)," is incorrect. The subsequent entry on the same page, "Against ratifying the contract with The Burlington and Missouri River Railroad Company," is correct. I can't give the exact number of votes cast for and against; my recollection is that there was a majority of more than 600 votes against the ratification. It is my

opinion that the error in the record consists in a mere transposing of the numbers. Exhibit C to my deposition is a copy of the record of said election. For so much thereof as relates to the vote on the proposition see Abstract, p. 78. The compromise I have spoken of consists of Exhibit C to answer of C., B. & Q. R. R. Co. (Abstract, pp. 21–23), and the adjustment I have spoken of consists of the carrying out of this contract.

Redirect examination:

At the time of submitting the proposition to a vote of the people, the railroad company had complied with the contract on its part.

178 Recross-examination:

In addition to the exchange of deeds, as already referred to, the railroad company agreed to build its road through Mills County, and to build a depot at Glenwood, and agreed to deed certain lands to individuals on payment of $1.25 per acre. I recollect A. R. Wright, Geo. Pack, and H. Wearin as among the number. There was no authority for making the deeds to the railroad company other than the contract referred to. This contract had not at the time of making these deeds been submitted to a vote or in any way sanctioned by the people. I know that the contract provided that the suit pending should stand until the conditions of the contract were complied with. At the time the deeds were made to the railroad company I think the road was built through the county and a depot built at Glenwood. As a member of the board, I would not have consented to make the deeds if the road had been built through the county and a depot at Glenwood. The building of the road and depot was one of the considerations for which we gave the lands and agreed to give the money.

Redirect examination:

If the railroad company had refused to comply with any condition and obligation under the contract on its part, I would not have consented to a conveyance of any of the lands in controversy to the railroad company.

And def't, further to sustain the issues on their part, and subject to the objection made on the trial and entered of record, introduced the following witness and offered the following written evidence; it being expressly agreed in open court between the parties that in cases where no ruling should be made on said objections at the time the same were made, then that the court was to consider and rule on the same on final hearing, and to indicate such ruling in announcing the judgment and decree.

XV. W. W. PEET, on the part of def't, being sworn, said (Transcript 1227):

I reside in Burlington; am an employee of the C., B. & Q. R. R.
179 Co.; I have charge of the payment of taxes and all matters relating to taxes on railroad lands; have paid taxes this day upon some of these lands for the year 1875 amounting to $202.84. Exhibit A, hereto annexed, is a list of the lands so paid on.

Cross-examination:

I paid these taxes to-day, February 11, 1876; a little after the 1st of

January, 1876, I made a list of lands in all the counties I had to pay throughout the State, including this list; I am the same W. W. Peet whose deposition has already been taken and sead in this case, and am the same person who made efforts to pay taxes on these lands for the year 1874; I have had conversation with my superiors in regard to coming here and offering to pay these taxes at this time; Mr. Touzalin instructed me to do so; I arrived here on the express at 9 o'clock a. m. to-day; the former treasurer of the county refused to receive taxes on every one of the tracts described in the list marked Exhibit A; I think I have stated in my former deposition how I made the tender to the former treasurer, and how he refused, and the list upon which I made a tender included all the lands in the list paid to-day; when I made the tender to the former treasurer I did not expect the money to be received; I decline now to answer whether or not the treasurer at the time of such tender offered to give me a receipt with a condition in it; I refer to my former deposition on that point; at the time of making such tender I knew that there was a lawsuit pending in regard to the land, and when I paid the taxes to-day I knew that this suit was pending, and involved the lands on which I paid, and knew that the former treasurer had refused to take the taxes on these lands, and gave the ordinary receipt; I knew that the former treasurer had given his reasons for his action in refusing to take the taxes, and gave the ordinary receipt, and these reasons were present in my mind when I paid the taxes to-day; the former treasurer told me at the time of the tender that the board had ordered him not to collect the taxes on these lands, and I did not enquire before paying to-day, whether or not this order had been rescinded; the present treasurer said nothing to me about the order; I asked him no questions.

180 Redirect examination:

My business here to-day was to pay taxes on other lands, as well as those in controversy; I didn't know that this suit was on trial at this time till I came here to-day; the treasurer took the money and gave me the ordinary receipt, and made *on* objection.

EXHIBIT A.

Being a list of lands paid on May 11, 1876, *in name of C., B. & Q. R. R. Co., amounting to* $202.86.

Description.	S.	T.	R.	Description.	S.	T.	R.
SE. SW	5	72	40	NW. SW	28	71	43
SW. q	6	"	"	Pt. NE. NE. ¼ NE. q	31	"	"
E. h. NW	7	"	"	E. h. SE	32	"	"
S. h. SE	9	71	41	NW. SW	27	72	"
SE. NE.	23	72	"	SW. q	17	"	"
NE. SE.	23	"	"	W. h. NW	20	"	"
NW. NE.	24	"	"	W. h. SW.	20	"	"
W. h. NW	24	"	"	W. h of W. h	33	"	"
SE. NW	24	"	"	N. h. NE	33	"	"
Pt. N. h	24	"	"	NE NW	33	"	"
W. h. NE	10	71	43	W. h. SW	33	"	"
E. h. NE	20	"	"	SE. SW	33	"	"
E. h. SE	20	"	"				
W. h. NW	28	"	"				

XVI. M. M. ANGELL, on the part of def'ts (Transcript, p. 1245), being sworn, said:

I live in Glenwood. Here witness was shown a list, and the following question was asked:

Q. Did you make that list?

(To which question pl'ff at the time objected, on the grounds following:

"1. The lands described in the list are of the class of lands known as swamp lands, and not taxable until after a valid sale thereof by the county, and said lands being still owned by the county, the list offered is in contravention of law, and works no estoppel.

"2. That upon the issues made, this paper, and any statement of the witness in reference to the same, are incompetent."

Which objections were at the time overruled, and to which ruling the pl'ff at the time objected.)

181 A. I did make the list from the tax list in the office for the years 1871 to 1874, inclusive; it is correct.

Cross-examination:

I only know it is what the books indicate; I have no personal knowledge of anything stated in the list.

Redirect examination:

The books show the names of the party paying taxes according to the list.

182 *List referred to by witness Angell.*

Names.	Descripti'n.	S.	T.	R.	1874.	1873.	1872.	1871.
S. Masters	N. h. NE	5	72	40	$10 75	$7 41	$6 06	*$6 76
A. Wearin	SW. NE	"	"	"	3 60	.....	.....	*5 10
S. Masters	SW. NE	"	"	"	.....	2 48	4 60	.....
D. Henderson	E. h. SW	"	"	"	7 37	5 07	*7 69	8 14
Samuel Purcell	NE. NE	7	"	"	12 60	8 68	7 36	8 16
F. M. Thomas	SW. q.	8	"	"	17 60	*11 84	*18 40	20 40
Henry Fisher	E. h. NE	17	"	"	9 00	6 60	9 20	10 20
Town of Hastings	NW. q.	19	.....	.....	.....	.....	.....	*40 80
W. A. Eckley	E. h. NE	4	73	40	8 93	6 46	.....	*10 45
Peter Eckley	E. h. NE	"	"	"	.....	.....	8 36	.....
" "	SE. q.	"	"	"	.....	23 80	21 16	36 96
" "	W. h. NE	9	"	"	.....	5 44	*8 64	8 80
B. & M. R. R	SW. q.	"	"	"	.....	17 60	21 12	35 10
J. A. Boswell	W. h. SW	14	"	"	18 72	11 52	.....	13 94
H. E. Perry	W. h. SW	"	"	"	.....	.....	14 00	.....
James Bone	NW. q.	17	"	"	3 52	2 56	2 80	*4 70
Strahn & Evans	SE. NE	20	"	"	.....	.....	2 80	3 50
Geo. Plumb	SE. NE	"	"	"	.....	2 56	.....	.....
Strahn & Evans	NE. SE	"	"	"	.....	2 56	3 50	.....
Geo. Plumb	NE. SE	"	"	"	.....	.....	.....	3 79
S. Robbins and Strahn and Evans	NE. q.	21	"	"	38 40	16 97	*14 00	32 34
Strahn & Evans	N. h.	"	"	"	11 52	7 68	7 00	8 20
B. & M. R. R	S. h.	"	"	"	.....	6 72	5 60	8 16
Strahn & Evans	N. h. SE	"	"	"	7 68	6 72	*7 20	16 32
" "	N. h.	28	"	"	43 92	31 24	*22 40	32 64
" "	N. h. SW	"	"	"	9 76	6 72	*5 60	8 16
B. & M. R. R	S. h.	29	"	"	.....	3 36	2 80	3 78
" "	S. h.	"	"	"	.....	6 72	5 60	7 56
" "	S. h. SW	"	"	"	.....	6 72	6 50	9 40
J. Wearin	NW. SW	"	"	"	2 72	3 36	3 60	3 83
L. Robbins	SW. SW	"	"	"	4 80	3 84	2 80	2 96
B. & M. R. R	SE. NW	"	"	"	.....	3 36	.....	4 70
Geo. Plumb	SE. NW	"	"	"	.....	.....	2 80	.....
B. & M. R. R	SE. q.	"	"	"	.....	13 44	11 20	15 04
Strahn & Evans	SE. q.	7	72	"	17 60	*11 84	*18 40	20 40
" "	N. h. NE	19	"	"	6 50	*5 92	*9 20	10 20
B. & M. R. R	W. h. SE	28	73	"	.....	.....	5 60	8 16
B. Pickerel	W. h. SE	"	"	"	.....	*8 57	.....	.....
Geo Plumb	SE. SE	20	"	"	3 06	2 56	3 50	3 70
B. & M. R. R	SW. SW	22	"	"	.....	4 20	3 50	8 10
" "	N. h. NE	31	"	"	.....	6 72	7 00	9 46

List referred to by witness Angell—Continued.

Names.	Descripti'n.	S.	T.	R.	1874.	1873.	1872.	1871.
" "	S. h. NW	"	"	"	.....	6 30	6 57	9 40
" "	SW. SW	10	71	41	.....	4 76	6 60	5 33
E. T. Musselman	SE. NW	11	"	"	1 62	6 35	*8 80	7 68
Murphey	E. h. SW	15	"	"	9 29	7 52	*11 76	9 36
"	W. h. SE	"	"	"	9 72	7 12	*17 28	9 36
Geo. Wilson	SE. SE	31	"	"	.....	9 07	5 04	6 84
F. Hobbs	S. h	32	"	"	.....	*77 09	*50 99	55 81
B. & M. R. R	E. h. SW	33	"	"	.....	16 00	*8 40	11 40
J. Antrim	SW. SW	"	"	"	5 20	6 80	*4 20	5 70
H. W. Summers	E. h. E. h. NW. SW.	"	"	"	29 50	25 80	19 32	20 22
J. Wearin	E. h. SW	1	72	"	8 80	.....	.....	10 20
W. Kempton	E. h. SW	"	"	"	.....	8 80	.....	.....
183 Chas. Ross	E. h. SW	1	72	41	.....	.....	$9 20	.....
B. & M. R. R	W. h. SE	13	"	"	.....	$4 00	6 00	9 00
S. G. Sidner	NW. NE	1	73	42	.....	4 82	4 90	5 20
H. Van Kirk	NE. NW	"	"	"	$5 09	4 57	11 71	6 22
D. Cavanaugh	NW. NW	13	73	"	.....	7 15	6 55	6 91
Smith & Wyant	W. h. NE	19	"	41	16 66	.....	13 10	13 81
J. C. Herbert	SE. SW	"	"	"	9 42	7 22	8 16	8 67
W. L. Wyatt	W. h. SE	"	"	"	16 86	.....	13 10	13 82
A. H. Bergen	NW. q	1	71	43	18 86	20 48	16 17	16 64
W. E. Dean	W. h. NE	3	"	"	.....	11 91	15 68	16 04
" "	N. h. NE	11	"	"	.....	5 62	16 38	16 76
C. L. Epperson	SW. NE	5	"	"	6 76	4 16	6 55	6 70
B. S. Gunsollier	Pt. SE. NE	"	"	"	38	21	26	27
G. Morrow	N. h. SW. & NW. SE.	"	"	"	23 24	14 30	21 06	21 54
T. S. Crewdson	NE. SE	"	"	"	12 44	6 80	9 36	9 58
T. A. Wright	SW. SE	"	"	"	10 38	5 67	7 02	7 18
W. Jones	SE. SE	"	"	"	7 94	4 91	7 02	7 18
J. Haynie	SW. NW. & S. h. SW.	9	"	"	31 54	20 60	31 52	33 52
A. R. Wright	Pt. SE. q	"	"	"	39 97	24 68	38 22	39 10
J. S. Wright	E. h. NW	10	"	43	14 40	14 08	*10 96	9 82
P. L. Delashment	NE. SW. & N. h. SE. & S. S. SE.	17	"	"	.....	19 00	29 59	30 17
P. L. Delashment	W. h. SW. & SE. SW. & SW. SE.	...	...	...	.....	*8 01	*10 80	*10 73
W. W. Crewdson	NW. NW	21	"	"	6 48	5 81	7 03	7 72
Van Eaton & Crockett	SW. NW	"	"	"	6 82	4 16	4 24	6 18
"	NW. SW	"	71	"	5 28	3 21	7 24	6 18
Thomas Conner	SW. SW	"	"	"	4 01	2 48	4 19	4 12
Jas. Queen	SE. SE	29	"	"	2 31	3 86	*2 97	2 98
B. & M. R. R	SW. NE. & NW. NW. & W. h. SE.	34	"	"	.....	5 81	10 44	16 61
E. Haymaker	SW. SE	33	"	"	3 72	2 75	5 78	.....
S. Ives	SW. SE	"	"	"	.....	.....	.....	9 27
B. & M. R. R	SE. SW	26	72	"	.....	2 94	2 32	3 41
L. H. Gamon	NE. SW	29	"	"	6 30	.....	.....	.....
O. B. Gould	NE. SW	"	"	"	.....	4 90	7 92	8 51
Jas. Dews	NE. SW	"	"	"	.....	.....	.....	5 44
Giles Hinson	NW. SW	"	"	"	3 77	2 34	5 28	.....
H. B. Scott	NW. NW	35	"	"	54	*2 71	2 76	*5 70
J. Johnson	NE. SW	27	"	"	6 34	5 43	5 57	5 69
O. Allis	E. h. NW	17	73	"	12 00	10 20	*8 00	3 60
J. Hamilton	E. h. SW	"	"	"	5 60	*4 76	*8 00	7 20
B. & M. R. R	NW. NW	19	"	"	.....	1 12	4 00	1 92
J. Hamilton	NW. NW	20	"	"	2 80	*4 56	5 28	3 12
J. Graham	SW. SE	25	72	44	3 60	2 80	7 04	9 20
Hendrie	SE. NE	12	"	"	2 02	.....	.....	.....
J. Calaman	SE. NE	"	"	"	.....	1 56	6 60	6 80
B. & M. R. R	W. h. SW. NE	2	71	41	.....	2 38	2 64	2 30
H. B. Jones	SW. NE	9	"	"	5 84	4 76	5 04	5 04
J. H. Fisher	SE. NE	19	"	"	5 84	4 76	5 04	5 04
184 B. & M. R. R	E. h. SW. & W. h. SE.	29	71	41	.....	$30 80	$20 16	$24 20
Kilpatrick Bros	W. h. SE	28	"	"	16 17	11 47	14 40	14 40
B. & M. R. R	SE. NE	32	"	"	.....	8 00	5 04	6 84
Barnes	W. h. NE. & SE. NW.	28	"	"	16 46	17 52	15 12	16 92

[On the original table, and over the amounts marked with *, are written the letters "B. & M. R. R.," indicating that the amounts were paid by said B. & M. R. R. Co.]

XVII. Defendant next offered in evidence (Transcript, 1251) the swamp land records of Mills County, so far as they show sales by the county of these lands in controversy to private citizens prior to the institution of the first suit by Mills County against the B. & M. R. R. Co., and also sales prior to the settlement of July, 1868; that is, so much of the same as show sales of land by Mills County that were in controversy in the other suit prior to the settlement.

To which offer pl'ff at the time admitted that the book offered is a part of the records of the auditor's office, but objected to the book as concluding the county in regard to the title she may have had in the lands; also because the book is not the best evidence as to contracts or as to title.

Pl'ff further objected to the book being received as evidence of the sale of any other lands than those indicated in the statement of counsel. Before passing upon the objection, def's introduced

XVIII. J. M. POWELL (Transcript, 1252) as a witness, who, being sworn, said: These are the books belonging to the auditor's office; they are a record of the pre-emptions and sales of swamp lands in this county; there are no other records that I know of.

Cross-examination:

There are other records in the recorder's office, records of deeds made, and there are other records in the auditor's office—plats, for instance, of swamp lands patented by the State to the county.

185 Re-examination:

These are the only record of sales and pre-emption of swamp land that I have any knowledge of. I am auditor of the county at this time; after the land is sold and paid for it is deeded to the individual, and that deed is placed on record in the recorder's office, and there is a book in the auditor's office that will show a part of the lands deeded; I have no name for the book; it is just a little bit of a memorandum book, and is very incomplete.

Counsel for def't stated that they offered the whole of the books so far as they related to the lists of lands conveyed to Mills County or to individuals, and thereupon the court overruled the objection of pl'ff; to which ruling pl'ff at the time excepted.

NOTE.—No further designation of the portions of books so offered were ever made to or considered by the district court.

XIX. D. C. BRIGGS, on the part of defendants (Transcript, 1259), being sworn, said:

I have lived in Mills County twenty-one years; was a member of the board of supervisors for the years 1868 and 1869; I think I was absent when the committee was appointed to submit a proposition to the railroad company in 1868, and I don't recollect if I was present at the meeting of the board in November, 1868, when the committee reported; the question of compromise was before the board, and they ratified it; in adjusting the contract the company quitclaimed a portion of the lands to the county, and the county quitclaimed another portion to the railroad company; the county was also to pay $10,000, I think; I was a member of the board at the time when some of these deeds were made.

XX. L. W. TUBBS (Transcript, 1261), on the part or pl'ff, being sworn, said:

I have lived in this county something over twenty years; was at one time county judge; lived here when the committee was appointed to confer with the railroad company; was one of that committee; I don't know that the railroad company did anything to induce the appointment of
186 that committee; so far as I understood it there was quite an uneasiness in this county at that time; the county had sold a large portion of land to individuals who were anxious to get their titles settled; at the time this committee was appointed the railroad company had surveyed no lines in, near, or through Mills County, except the original survey of 1856.

Cross-examination:

The committee was appointed in the month of June; except the original line, no lines had been run at that time; if my memory serves me right, the party running the line from Red Oak to Council Bluffs was not out at that time; I have no recollection of a party being out before we returned from Burlington; there was a party out that summer and fall—towards the fall of the year, I can't tell just when it was; in respect to alarm being felt in the minds of the people in regard to whether they would get the road centrally through the county or not, I will say that we were always uneasy about that, for we did not know where it would go, or anything about it; I didn't recollect anything more at that time than there had been for years previous; I refer to the 1st of June; I know there was an uneasiness that fall, quite an uneasiness in regard to the road; I have been some little interested as a citizen in the affairs of this company; I did sign a petition to the board to withdraw this suit; I presented the petition to the board and made a speech; said it was advisable to stop this suit for the best interests of the county; I urged its withdrawal as an individual; in respect to the question as to whether I was in conference with the railroad attorneys, I answer that I have often talked with the attorneys of the railroad company; at this time I only talked with the attorneys here; I did take quite an active part in trying to have this suit stopped; I advocated the petition for its withdrawal; the compromise between the railroad company and the county was the contract made by the committee; I refer to no other instrument.

XXI. D. C. BRIGGS (Transcript, 1257), on the part of def'ts, being sworn, said:

187 The object of the compromise was to settle the lawsuit, as I understood it, and thereby settling the titles of purchases from the county; as I understood it, there was doubt as to the result of the suit.

Cross-examination:

Many people felt an anxiety about the location of the road; I was present at the time the contract was ratified by the board of supervisors; I voted for it.

(Here the records of the vote referred to was shown witness showing that he did not vote for its ratification, and he then qualified his former statement as follows:)

It is possible that I was not present at the time the vote of ratification was taken, but I was present at the time the deed was signed; I was not

present at the meeting when the contract was ratified; I was absent in Michigan; there was existing in the minds of a great many of the people at this time considerable anxiety in reference to getting the railroad here; I did not consider the location of the road a question; I felt sure the railroad company would go where they pleased, regardless of what we did; I had heard of a line being run from Red Oak to Council Bluffs, but whether it was done before or after, I cannot remember.

Redirect examination:

I think the running of this line had no influence upon my mind or vote.

Recross-examination:

I had an interest in the swamp land matter; a pre-emption on a 160 which I did not get, a contract on a 40 which I did get from the county.

XXII. S. W. WILLIAMS (Transcript, p. 1282), who, being sworn, said:

I have lived in Mills County over ten years; was a member of the board of supervisors in 1868, at the time the committee was appointed to confer with the railroad company. The object of appointing this committee, as I recollect, was to settle the lawsuit and secure to actual settlers the swamp lands in the county; I was not cognizant of anything that the rail road company did to influence the action of the board at that time.

188 Cross-examination:

There was another object sought in making the proposition, that was to secure the railroad through Glenwood; that was one object in making the proposition; I knew nothing personally at that time of the running of the line from Red Oak to Council Bluffs, only by hearsay; I had heard of such a survey; there was at that time some considerable uneasiness felt here with a good many that the road would not be built through Glenwood and centrally through Mills County, and that was one the inducements in making the proposition. In my answers I have had reference to the feelings, views, and fears of the board as I understood them.

Redirect examination:

We wanted to make the best bargain we could; we were working for the county, and we wanted to make the best bargain we could for the county, and if we could get the railroad through the county, and get the titles to swamp land settlers in the county, we thought we were doing a pretty good day's work.

XXIII. WILLIAM HALE (Transcript, 1287), on the part of def't, being sworn, said:

I reside in Glenwood, and am a lawyer; have lived in Mills County seventeen years; was attorney for Mills County in the former suit between the county and the B. & M. R. R. Co., commenced in 1862 or 1863; the record to which I refer has already been introduced in evidence on this trial; that suit was begun in the district court of Mills County, and was carried to the supreme court of the State, and from there to the Supreme Court of the United States. In 1866 a proposition for a settlement of that suit was made; I was authorized to make it by a verbal order of the

board; the proposition made was similar in terms to the one in controversy, but it was not accepted by the railroad company; subsequently, in June, 1868, a committee was appointed by the board to submit another proposition, which was accepted; the latter proposition was submitted to the railroad company in July of that year; we gave the proposition to C. E. Perkins, the general superintendent at that time; he said that
189 he would submit it to the authorities, and if accepted would notify us of the fact. On the 31st of October, 1868, we received notice in writing of the acceptance of the proposition, and within a day or two afterwards we reported our action to the board in the matter, and the same was ratified by the board. I notified Mr. Ewing, my associate in the case, of the proposition and its acceptance, and soon after its ratification I told or wrote Mr. Harvey—I think I told him verbally—to inform Mr. Ewing of the fact that this proposition had been accepted; and I also think I wrote Mr. Ewing about that time, under date of April 12th, 1869; this letter was undoubtedly mailed and addressed to him at Washington, D. C. After the acceptance of the contract by the county Mr. Watkins and myself were appointed to aid the board in adjusting and carrying out the provisions of the contract.

Cross-examination:

I have no distinct recollection of mailing the letter to Ewing; but have no doubt that I did. I am now attorney for the railroad company; my first case for the company was some time in 1872 or 1873; I did not appear personally in the old suit in the Supreme Court of the United States.

Redirect examination:

The basis upon which I base my testimony in regard to the sending of that letter to Mr. Ewing is that I received a reply to it from Mr. Ewing.

Recross-examination:

Q. Well, we want that reply.

A. Well, I think it is in the office; I know that I received it.

NOTE.—This letter was not produced.

XXIV. J. H. WING (Transcript, 1301), on the part of def'ts, being sworn, said:

I came to Mills County in the spring of 1859; was a member of the board in 1868, when committee was appointed to submit proposition to the railroad company; the lawsuit was about the title to the swamp lands in the county.

190 Q. State what the object of the board was in appointing that committee.

(Objected to by pl'ff as not the best evidence, the object being expressed in the resolution of appointment; which objection was overruled by the court, and to which ruling the pl'ff at the time excepted.)

A. To settle this suit. The suit was then pending, and there was a chance that the county might lose it. There was expense attending the suit, and indirectly the suit was harrassing to the settlers. These were some of the causes which led to the contract.

Cross-examination:

I have not seen the contract since that time; I can think of a great many things that were talked about at that time, but can think of nothing else that influenced myself as a member of the board in the appointment of the committee; I did not consider the getting of a railroad to Glenwood had anything to do with it; I will not swear the securing of a railroad was not talked about by the members of the board; I will only swear so far as I myself was concerned; I know that the securing of a railroad is in the contract, and would not swear that that was not one of the objects in making it; I would not swear that it was or was not, except so for as I myself was concerned; I think there was some alarm here felt in reference to where that road would go, and I think it was talked about when the committee was appointed, and I think the settling of that feeling of alarm on the part of the people had something to do with it; I remember a survey was made during that summer from Red Oak to Council Bluffs.

Redirect examination:

I do not recollect of the railroad doing anything prior to the appointment of the committee to confer with them that influenced my action or the action of the board in submitting that proposition.

Recross-examination:

I can't say that the survey of the Mud Creek route from Red Oak to Council Bluffs was not then in progress; it might have been and it might not.

191 I could not state whether I knew of this survey before the proposition was submitted in July following; if the party were in the neighborhood of my res'dence I knew it; I knew Haven; he was at my house frequently while working on this survey, but later than the time referred to, some time in August; I saw him until about the time he quit; I know that I met him; he was at my house several times; I fix it after the 3d day of August; I threshed on that day, and we had a flight of grasshoppers visit us at the same time, on the occasion of my making his acquaintance.

XXV. (Transcript, p. 1314.) Pl'ff next offered in evidence the act of Congress of June 2d, 1864.

XXVI. S. V. PROUDFIT, (Transcript, p. 1315), on the part of def't, being sworn, said:

I have made diligent search in our office for the letters received and failed to find them. I have a distinct recollection of seeing the letters myself within the last eighteen months in our office; there was a small package; I do not know how many letters; I recollect that they were taken from the files for some purpose, but what for I cannot remember.

Cross-examination:

I have no distinct recollection of the contents of these letters further than the fact that they were letters from Thomas Ewing. I fail to find any letters from him. Mr. Hale, Mr. Stone, and myself have common custody of all business correspondence. I don't know whether or not these

letters are in the personal custody of Mr. Hale or Mr. Stone. I know that they are not in their proper place in the office, and have no knowledge of their whereabouts.

XXVII. WM. HALE (Transcript, p. 1318), recalled by def't, said:

I have no knowledge of these letters. I supposed that they were in the office until last night or this morning. I have not seen them since they were taken from the files for Mr. Williams, who was looking up a matter of fee in that case. In respect to receiving a reply to my letter bearing date April 12th, 1869, I will state that I had a correspondence with Mr. Ewing in regard to the case after the settlement, but whether I got
192 a distinct reply I cannot now swear. I think he knew of the settlement before April 12, 1869. I am confident he did afterwards. I don't know of any other particular fact, only I remember that fact distinctly.

Cross-examination:

I have not made personal search for the letters.

XXVIII. Press copy of letter (Transcript, 1320). Def'ts here offer press copy of the letter from Wm. Hale to Thomas Ewing, dated April 12th, 1869, to which offer and letter the pl'ff at the time objected, as immaterial, irrelevant, and incompetent; which objection was overruled by the court, and to which ruling the pl'ff at the time excepted, and the copy was received, as follows:

GLENWOOD, IOWA, *April 12th*, 1869.

Hon. THOMAS EWING, *Washington, D. C.:*

MY DEAR SIR: I am in receipt of yours of 8th inst. I requested Hon. J. A. Harvey, now in Washington, and who is attorney for Frémont County vs. B. & M. R. R. Co., to inform you that the case of Mills County vs. B. & M. R. R. Co., to which you refer, was, in July last, settled by the county and railroad authorities. It was agreed that the case should be continued from term to term until it should be ascertained that the B. & M. R. R. Co. would comply with the conditions of settlement.

Respectfully,

WM. HALE.

XXVIII. D. M. WHITFIELD (Transcript, 1321), on the part of def'ts, being sworn, said:

I was a member of the board of supervisors in 1271, and while such member there was a claim on the part of the railroad company presented for the $10,000 provided for in the contract. It was presented by Mr. Watkins, the railroad attorney, with some deeds for the board to sign. I said I did not consider it a just claim, and that we could not pay the money, and I could not sign the deeds, and Mr. Creech and Mr. Buffington concluded they could sign the deeds presented by Mr. Watkins, but they did not see how they could pay the $10,000. The board was unanimous in refusing to pay the claim.

193 Cross-examination:

This was in 1871, and this was the cause of the submission of

the proposition to a vote of the people; it was thought by the board that the people should understand the acts of this committee or something to that effect, and Mr. Watkins was chosen to make a statement of this matter in full, and have it published, but before publication the board was to review it; that was Mr. Watkins' wish and the wish of members of the board; Mr. Watkins was chosen to get up this article to be published, leaving it to be voted on by the people; Mr. Watkins, their attorney, and Mr. Creech and Mr. Buffington thought it was the best they could do; this was at the time of the signing of the deed by Buffington and Creech in June, 1871.

For copy of this deed see Exhibit G, Abstract, p. 20.

XXIX. Tax deeds (Transcript, 336 and 1225). Def'ts also offered in evidence the tax deeds attached to the amendment to the answer of the C., B. & Q. R. R. Co. (Transcript, 338), to which offer and deeds the pl'ff at the time made and filed written objections thereto, as follows:

1. Because the lands described in said deeds are of the class known as swamp lands, and being swamp lands are not subject to taxation until after a valid sale thereof by the county, and said deeds being upon lands still owned by the county they are in contravention of the statute and work no estoppel.

2. The treasurer is guided by the statute in the discharge of his duties. Under the statute there was no power to tax the lands; therefore his act being unauthorized is not the act of the county, and the county is not estopped from denying the validity of his acts in executing the deed.

3. Upon the issues made the deeds, and each of them, are incompetent, irrelevant, and immaterial.

For the deeds offered as aforesaid, see Transcript, 348, and Abstract, 63.

194 There is no ruling of record by the district court on the objection aforesaid, nor were such objections waived by pl'ff.

XXX. Def't further offered in evidence the lease from the B. & M. R. R. Co. to the C., B. & Q. R. R. Co. (for copy of which see Abstract, p. 50–'4), to which offer and lease the pl'ff at the time made and filed written objections, as follows:

I. Because the lease only purports to be an agreement to convey to the consolidated company, and is not in itself a conveyance, and hence is incompetent to show title in said C., B. & Q. R. R. Co.

II. Because upon the issues made said instrument is incompetent, irrelevant, and immaterial.

No ruling by the district court and no waiver by the pl'ff.

XXXI. Def't further offered in evidence Exhibit E to the answer of the C., B. & Q. R. R. Co. (for copy of which see Abstract, pp. 46–'9), to which offer and exhibits and deeds therein referred to pl'ff at the time made and filed written objections as follows:

I. The lands described are of the class of lands known as swamp lands, and being such the same already belonged to the county, and the county took nothing by said deeds; the county owned the lands before and acquired no other or further title by the deeds, and hence the county is not estopped from showing that the deeds are void.

II. The deeds referred to are mere quitclaim deeds, and of themselves afford no evidence of either good faith or valuable consideration.

III. Upon the issues made the list and deeds are incompetent, irrelevant, and immaterial.

No ruling by the district court*h*, and no waiver by pl'ff.

Def'ts rest in chief.

195 *Plaintiff's rebutting evidence.*

XXXII. D. M. MITCHELL (Transcript, p. 1328), recalled by pl'ff, said:

I stated in my former testimony that I was once auditor of Mills County; my recollection as to how the lands in controversy in this suit came on the tax list is, that some time in the winter of 1871, in January or February, Mr. Atkins, then treasurer of Mills County, came to me and said that the railroad company, by their proper agent, had come in and offered to pay taxes, or wished to pay taxes on these lands, and that the lands were not on the books; this was the year in which the lands were not assessed; Atkins suggested as they were there ready to pay their money he thought the lands ought to be put on the books, so that we could receive the money and give them proper credits; I recollect of disputing with Atkins about our authority to put these lands on, but we finally concluded to do so, and went to work, and from the lists furnished by the railroad company, put the lands on the books as an ad'enda to the tax books; before this time I, as auditor, had passed the books over to the treasurer, and for the reasons aforesaid I placed the lands on the tax books as an ad'enda; this was in the beginning of 1871; in preparing books for the township assessors for the subsequent years we obtained descriptions and owners' names from the former tax books and transfer books; I don't know any particular reason for including these particular lands; all the lands in the county, I believe, are put on the assessor's books, and the owners' names when known.

Cross-examination:

The plat of transfers was kept in my office; there was indicated thereon in pencil the names of the owners of lands; these names were put there in the transfer of deeds, and the plats purported to show the ownership of lands—the last transfer—the transfer of record in the recorder's office.

Redirect examination:

For the year 1871 we obtained the list of lands to be put on the assessor's books from the tax books of previous years and the transfer
196 books; we had both on our tables; my term of office expired with the year 1871, and Mr. Powell succeeded me as auditor.

Recross-examination:

I remember that in 1868 the board remitted the taxes on all railroad lands in the county for two years; I understood it was for the year 1868 and 1869; the list furnished by the railroad company in the forepart of 1871, already referred to, was put on the tax books for 1870; that would be the first year after the years for which taxes had been remitted; no real estate assessment was made in the year 1870; Mr. Atkins told me that the agent of the railroad company had applied to him to pay the taxes on

their lands; I don't know whether the fact of such application was known to the board of supervisors in the year 1871; I don't know whether the matter was brought up and explained to them or not; I could not say that the list contained all the lands in the county belonging to the railroad; the tax book upon which I placed these lands as an ad'enda is, I presume, in the treasurer's office; I don't remember whether the list was kept on file or returned to the railroad company.

NOTE.—At this point the record recites the following (Transcript, p. 1238): Counsel for defendant offer in evidence a list of the lands that were furnished by Mr. Atkins to Mr. Mitchell, showing the list of lands that he put on the tax books for the year 1870, but no such list was furnished in fact, and none such is now found among the files of this case.

XXXIII. A. J. HIGHT (Transcript, 1339), being sworn on part of pl'ff, said:

In the year 1873, I think it was, I acted as clerk for the auditor of Mills County, and assisted the auditor in making out the assessor's books and in putting the list of lands thereon for that year; so far as known we wrote the owners' names in pencil opposite the descriptions, so that the assessors might erase and make corrections; we obtained descriptions and owners' names from the former tax books and the transfer books, and these were put on the assessor's books, in pencil, before they were sent out.

Cross-examination:

To the best my knowledge we put on the assessor's books
197 for that year every acre of land in Mills County, including, of course, the lands in controversy; the transfer books were kept in the auditor's office, and the law made it his business to enter transfers therein.

XXXIV. Act of general assembly (Transcript, 1344). Counsel for pl'ff in this connection offered in evidence chapter 61 of the acts of the general assembly of Iowa for 1866, being an act for the transfer of real estate, to regulate assessments thereof, and for the collection of revenue.

XXXV. LEWIS ROBBINS (Transcript, 1342), being sworn on part of pl'ff, said:

I was a member of the board of supervisors in 1873, and remained such for three years; on the first Monday in September, 1874, a question came before the board as to whether these lands in controversy were properly on the tax lists, and whether or not they should remain thereon; and the order of the board at that time was not to have them go on the tax books at all; that was the order of the board; at the October meeting following we discovered that the order had not been entered of record, when we repeated the order; the same order was continued in October which had been made in September; I did not know but that this order had been entered of record, until the January, 1875, meeting of the board; at that meeting the order was again repeated and entered of record; I think it was left off the record at both prior meetings by inadvertance.

Cross-examination:

The action in September was not a formal action of the board; there was a talk and understanding between members of the board; it was an order

the same as all other orders were made; there was an understanding that the lands should be stricken from the tax lists, and that they should not go on the tax lists for the year 1874; the tax books had not at that time been made out for the year 1874, and the order was that the taxes for 1874 should not be collected; when the order was put on the record at the January meeting, 1875, the lands had already been placed upon the
198 tax books, but the order in September previous was that they should not go on the tax books; Mr. Taft was then auditor; I think he was present when the order was made; he was busy at the desk writing for somebody; the second time, in October, his attention was called to it; I do not know why it did not go on record.

Order of board.

XXXVI. (Transcript, 1348.) Pl'ff next offered in evidence an entry in minute book B, of the auditor's office, p. 502, showing that the board made an order to remove the lands in controversy in this suit from the tax lists of 1874, which order is in the words and figures following:

Nunc pro tunc order of board of supervisors from minute book B, page 502. (See Transcript, p. 887.)

JANUARY 4TH, 1875.

We authorize the above minutes to be corrected so as to show that at the meeting of last date it was ordered that the taxes for the year 1874 on the swamp lands on which the title is in dispute between the county and the B. & M. R. R. Co., be not collected, and that the auditor be authorized to furnish a list of said lands to the treasurer, which list shall be his authority for not making such collections.

XXXVII. D. M. WHITFIELD (Transcript, 1348), recalled by plaintiff, said:

At the September session of the board the matter of removing the lands in controversy from the tax books was talked over, and it was unanimously agreed not to receive taxes on these lands; the way the board had been doing business when we came to one opinion in regard to anything it was taken as granted and placed on record; there was hardly ever a written motion; we expressed ourselves and let the auditor make up the record; I don't know that the auditor's attention was called to it at that time; we met again on the 30th of October; I requested Mr. Taft to write up the proceedings of every day so that I could sign it in the evening, which he did, except the proceedings of the last day of that session, when the proceedings were published; the order was still wanting at the Jan-
199 uary meeting, 1875, when the proceedings of the previous meeting were read over; the order was not mentioned in the proceedings, and at that meeting the order was formally drawn up and signed and placed on record; it should really have been in the proceedings of October previous; the auditor made no excuse why it was not on the record before; not a word said; just placed it there; passed it to the board and they signed it; that's all I know about it.

Cross-examination:

From hearsay I know that the county remitted taxes on the lands of

the railroad company for the years 1868 and 1869; I was not a member of the board at that time.

XXXVIII. JOEL SOLOMON (Transcript, 1353), sworn, testified on part of pl'ff:

I am a land agent; buy and sell lands for others; as such agent for Orlando Meads I sold tax certificates of purchase held by Meads to J. N. Denison, on the 28th of October, 1867; the sale was completed on that day; the paper here shown me is a correct list of the lands so sold to Dennison.

Pl'ff here offered in evidence the list of lands referred to by the witness Solomon, which is in words and figures as follows:

Mead's list assigned to Dennison Oct. 28, 1867.

Description.	S.	T.	R.	Description.	S.	T.	R.
SE. NW	1	72	43	SE. SE	29	72	43
W. h. SE	"	"	"	W. h. NE	33	"	"
N. h. NW	19	72	"	SE. NE	29	"	"
SW. NE	15	73	40	N. h. NW	33	"	"
NE. SW	31	72	"	SW. NW	"	"	"
NE. NE	1	"	42	NW. SE	1	"	44
SE. SE	19	"	43	SE. SE	"	"	"
E. h. SW	7	73	40	NW. NE	27	"	43
E. h. NW	15	72	41	SW. NE	13	"	44
SW. q	"	"	"	SW. SW	5	"	40
SW. SE	27	"	"	NW. q	"	71	43
W. h. SE	15	"	"	NW. SW	17	"	"
NW. SW	33	"	"	S. h. SW	"	"	"
SW. q	19	72	43	SW. SE	"	"	"

XXXIX. JOHN BARBOUR (Transcript, p. 1357), sworn on part of pl'ff, said:

200 I took my seat on the board of supervisors at the commencement of 1874; at our September meeting in that year we talked over the matter of ordering the lands to be stricken from the lists, and not to be put on the lists, and resolved to have it done; I don't know that we ordered the auditor so to enter it upon the minutes; it was an omission on our part, at least we found at a subsequent meeting that it had not been done, and I know that I called it up at the October meeting, and said that it must be done; I enquired of Mr. Taft if it was entered in September, and he said it was not; he said the lands were all entered on the tax lists, and we said it must be stricken off, that the taxes must be cancelled at that time; I mean at the October meeting; it was my understanding that it was done at this meeting; afterwards I was told that there was no record of it; I said it was a mistake, that I knew there was a record of it, at least I was pretty sure there was a record; at the January meeting, 1875, we found that the record said nothing about it, and we then saw that it was put on the record as of the October meeting.

Cross-examination:

At the September meeting, 1874, we agreed that it should be done; I don't think that we ordered the auditor to put it right down—it was an omission on our part; at the October meeting I consider that we did order the auditor to put it down; we made the order the same as we did other business; I called it up; there was no motion, as I know of, made and

seconded; there is a great deal of business done without that; we took no formal vote, but we voted it as we did a great deal of other business; we said it should be done, and I think we directed the auditor to do it at that time; the auditor was there, and I suppose he heard; I can't say whether he did or not; I think Mr. Robbins spoke to him about it; told him that the board did not want these lands in controversy taxed for the year 1874; Taft was auditor at that time; it seems that he did not obey the board; the lands at that time (October, 1874) were on the tax books; we found they had been entered on the books, and we said they must be stricken off; that was the first action of the kind taken; it was talked over at the September meeting, and that was the only action taken up to that time;
201 we had it up again at the January meeting, and that was the last of the tax business; I am still a member of the board; in respect to making an order with reference to putting the lands on the tax books for 1875, it was the understanding of the board that they were not to be taxed; I think there was an action of the board to the effect that these lands were to be stricken from the lists of 1875; if they are on the lists for that year it is not by authority of the board; that order has never been rescinded; we passed the tax books for 1875 over from the auditor to the treasurer in the usual manner, and if he put these lands on there it is not from any action of the board; it is not expected that we (the board) will go over the tax books and see that the auditor has made no mistakes when we pass them over; of course it is done by our action, but if he makes any errors it is not expected that we will look through the tax books for them.

Redirect examination:

The order of the board I have spoken of was never rescinded; after the board made that order the lands were stricken from the tax lists (of 1874). I know nothing of these lands having been placed on the new tax lists for 1875; we supposed they were not in at all; that was the understanding; they were not to go on the lists at all.

Resolution remitting taxes for 1868–'9.

XL. (Transcript, 1365½.) "Tuesday morning, September 8th, 1868, Mr. Hale, from special railroad committee appointed by the board, offered the following, to wit:

"In consideration and on condition that the B. & M. R. R. Co. shall locate the line of their road and build the same through Mills County, Iowa, via Glenwood, in said county, and also locate and build a depot at said town of Glenwood, it is hereby

"Resolved by the board of supervisors of Mills County, in the State of Iowa, That the taxes that may have been or shall be levied on the lands belonging to said railroad company in said county shall be, and the same is hereby, remitted: Provided, That this resolution shall not be so construed as to remit said taxes for more than two years to come, in-
202 cluding also the taxes which have been and are now levied on and standing against said lands, it being the true intent and meaning of this resolution that all of said taxes which have been or may be levied for two years in the future, so far as the board of supervisors of said county are authorized to do so according to law, are hereby remitted under the conditions and restrictions above set forth.

The ayes and nays being called for, the vote stands as follows:
Ayes—Allis, Briggs, Forrester, Lamb, Utterbeck, Wing, Summers, and Mr. Chairman—8.
Nays—Haynie and Ward—2.
Plaintiff rests in rebuttal.

Defendants' rebutting evidence.

XLI. W. H. TAFT (Transcript, 1366), being recalled for def'ts, said:
I was auditor of Mills County in 1874 and 1875. I received no instructions from the board of supervisors in September or October, 1874, concerning the striking off of any lands from the tax lists of that year. I knew that the lands in controversy were on the tax books of that year; they were not stricken from the tax books of that year.

Cross-examination:

I mean the year 1874. The tax list was delivered to the treasurer in November of that year.

XLII. M. M. ANGELL (Transcript, 1366):
I am now the treasurer of Mills County. I have not received any instructions from the board of supervisors to not collect the taxes on any lands that were on the tax books turned over to me. The lands upon which Mr. Peet paid a short time ago for the railroad company was on the tax books for 1875. Mr. Peet did not pay on any lands that were marked "swamp lands" on the books. I do not know, as a matter of fact, that the lands on which Peet paid are swamp lands.
There was nothing on these books to indicate but what the taxes on the lands were to be collected.

203 Def'ts rest, and the foregoing being all of the testimony offered or used by the pl'ff and def'ts at the final hearing of said cause.

Afterwards, on the 26th of February, A. D. 1876, final decree of said cause therein was made and entered of record, viz (Transcript, 546):

MILLS COUNTY, IOWA,)
vs.
B. & M. R. R. CO. ET AL.)

Now on this day this cause came on to be heard, and being fully submitted by the parties on the pleading, proofs adduced, and the argument of counsel, and the court having heard all things touching the issue, and being advised in the premises, finds:
1st. That so far as the issue made upon the pl'ff's petition is concerned the equities are with the def'ts. It is therefore ordered and adjudged that the pl'ff take nothing by its petition, and that the same be dismissed.
2d. So far as the def't, the C., B. & Q. R. R. Co., claims affirmative relief, to wit, a judgment for money against the pl'ff, the equities of said claim are with the pl'ff, and the relief prayed for is denied.
It is also ordered that def'ts have judgment against the pl'ff for the costs of this suit, to be taxed by the clerk.
The pl'ff and the def't, the C., B. & Q. R. R. Co., except to the judgment, and have until July 26, 1876, to settle bill of exceptions.

And on the 26th of March, 1876, pl'ff filed notice of appeal as follows (p. 548 of Transcript):

204 *Notice of appeal.*

In the district court of the State of Iowa in and for Mills County.

MILLS COUNTY, IOWA,
vs.
B. & M. R. R. Co. ET AL.

To the above-named def'ts, and to Hale & Stone and O. H. Browning, their attorneys, and to T. B. Ballard, esq., clerk of said county:

You are hereby notified that the pl'ff in said action has appealed from so much of the decree of the district court as is embraced in paragraph one thereof, to wit: "That so far as the issue made upon pl'ff's petition is concerned the equities are with the def'ts; it is therefore ordered and adjudged that pl'ff take nothing by its petition, and that the same be dismissed," and the further order "that the def'ts have judgment against the pl'ff for the costs of this suit, to be taxed by the clerk," rendered in favor of the def't at the February term thereof, and on the 26th of February, 1876, to the supreme court of Iowa, and that said appeal will come on for hearing and trial in said court at the September thereof, to be held at Council Bluffs on the 3d Monday in the month of September, A. D. 1876.

L. W. ROSS,
C. B. LAWRENCE,
D. H. SOLOMON,
Attorneys for Pl'ff.

We hereby acknowledge service of the foregoing notice at Glenwood, Mills County, Iowa, this March 24th, 1876.

HALE & STONE,
Attorneys for Def'ts.

I hereby acknowledge service of the foregoing notice at Glenwood, Iowa, this March 24th, 1876.

T. P. BALLARD, *Clerk.*

205 And on the 19th of August, 1876, the pl'ff filed a further and additional notice of appeal, with the return thereon, as follows:

In the district court of Mills County, Iowa.

MILLS COUNTY
vs.
B. & M. R. R. Co. ET AL.

To you and each of you, the above-named def'ts, notice is hereby given that the pl'ff in said action has appealed from so much of the decree of the district court as is embraced in part one thereof as follows, to wit: "That so far as the issue made on pl'ff's petition is concerned the equities are with the def'ts; it is therefore ordered and adjudged that pl'ff take nothing by its petition, and that the same be dismissed," and the further order "that

the def'ts have judgment against the pl'ff for the costs of this suit, to be taxed by the clerk," rendered in favor of the def'ts at the February term thereof, on the 27th day of February, 1876, to the supreme court of Iowa, and that said appeal will come on for hearing and trial in said court at the September term thereof, to be held at Council Bluffs, commencing on the third Monday in the month of September, 1876.

L. W. ROSS,
C. B. LAWRENCE,
D. H. SOLOMON,
Attorneys for Appellants.

We hereby acknowledge service full and complete to have been made of the above and foregoing notice of appeal for the def'ts, to wit, B. & M. R. R. Co., C., B. & Q. R. R. Co., J. W. Brooks, A. Hardy, J. N. A. Griswold, H. B. Jones, P. Eckley, W. H. Eckley, Geo. S. Wilson, S. B. Sidner, F. Schoenig, Giles Hinson, T. Crewdson, E. Vankirk, D. Cavenaugh, T. S. Godard, L. Hinson, J. V. Hinchman, for whom we have appeared on this 17th day of August, 1876.

HALE & STONE,
Attorneys for said Def'ts.

We hereby acknowledge service full and complete to have been made of the above and foregoing notice of appeal to the above-named def't, Otis E. Allis, as attorneys for him on this 17th day of August, 1876.

KELLEY BROTHERS,
Attorneys.

206 Having filed intervenors for W. H. Eckley, A. Sherman, J. A Boswell, J. Wearin, L. Robbins, P. Eckley, A. Kritz, I waive notice of appeal for each of these this 17th August, 1876.

D. H. SOLOMON.

On the 28th of August, 1876, there was filed in the office of the clerk. of the district court, an additional notice of appeal with return of service thereon, showing that the same was duly and personally served on the following def'ts, viz:

August 22, 1876, on def'ts J. Buckingham, Benj. Buckingham, Wm. Antrim, Elias Antrim, and John Antrim.

August 23, 1876, on def'ts S. D. Davis, H. W. Summers, E. Burns, Frank Hobbs, W. T. Roll, T. Miles, J. F. Hendrie, W. E. Deems, John Van Eaton, John Haynie, George Morrow, C. Epperson, B. Gunsolly, and D. Sheady.

August 25, 1876, on def't's J. S. Runkles, T. W. Wright. J. F. Hamilton, P. S. Deloshmut, and H. C. Watkins.

Assignment of errors.

1. The decree of the court below is not authorized by the evidence.
2. The decree of the court below is contrary to law.
3. The decree of the court below is contrary to equity.
4. The court below erred in permitting the question (Abstract, 180) to witness M. M. Angell, and in receiving in evidence his answer thereto against the objections of the pl'ff.

5. The court below erred in permitting the question (Abstract, 190) to witness J. H. Wing, and in receiving in evidence his answer thereto against the objections of pl'ff.

6. The court erred in permitting questions No. 5, 7, 12, 14, 15, 17,
207 18, 20, 24, 29, and 34, and each of said questions (Abstract, 117–121) to be propounded to the witness C. W. Spaulding against the objections of the pl'ff.

7. The court erred in permitting the questions (Abstract, 152) to be propounded to the witness C. E. Perkins against the objections of the pl'ff.

8. The court erred in permitting the question (Abstract, 154) to be propounded to the witness W. W. Peet against the objections of the pl'ff.

9. The court erred in permitting questions No. 4, 5, 6, and 7 to be propounded to witness D. N. Smith (Abstract, 164–'6) against the objections of pl'ff.

10. The court erred in permitting the introduction of tax deeds in evidence (Abstract, 193) against the objections of the pl'ff.

11. The court erred in permitting the introduction of lease in evidence (Abstract, 194) against the objections of the pl'ff.

12. The court erred in permitting the introduction of exhibit in evidence (Abstract, 194) against the objections of pl'ff.

13. The court below erred in not ruling upon the several objections made by pl'ff, and particularly indicated in assignments 6 to 12 aforesaid.

14. The court below erred in rendering judgment for cost against the pl'ff.

208 In the supreme court of Iowa, September term, 1876.

MILLS COUNTY, IOWA, APPELLANT,
vs.
THE BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY, et al., appellees.

Appeal from Mills district court.

D. H. Solomon, Chas. B. Lawrence, L. W. Ross, for appellant.
Hale, Stone & Proudfit, and O. H. Browning, for appellees.
Kelley Brothers, for Otis E. Allis, appellee.

Appellant's amendment to abstract of record.

The appellant, with leave of court and consent of appellees, amends its original abstract of record in the following particular:

By inserting on page 29 thereof, after "duly verified," the following:
"Feb. 8th, 1876, defendants filed motion to strike paragraph 2 of
209 amendment to petition, filed Feb. 7th, 1876, on the ground of redundancy and irrelevancy. Motion sustained, and plaintiff excepted."

By inserting on page 76 thereof, at the end of the examination in chief of E. C. Bosbyshell, the following as testimony of said witness:

I asked him (Joy) whether he thought the road would go through Mills County, and he said "he did not know." He said "they hated to run a road through the county when the people were fighting them."

I asked him what the probability was. He said "he did not know; they did not want to run a road where the people were fighting them; it was very hard to build a road when the people were fighting all the time."

I said, "I don't know as we are fighting you any."

"Well," he said, "this suit."

I says, "Why can't you fix up that suit?"

He said "he did not know; they were willing to fix it up; you folks, if you want that road through Mills County, ought to go to work and settle up that suit; have that settled (something to effect), you and the Fremont County people."

I says, "Us and the Fremont County people could not go to work and settle it, because they want the road as bad as we do, and they would be independent, and we undertake to tell them we was going to settle it for the purpose of having the road through here, anything of that kind, they would say, we won't settle it unless we will have a road through there. They would be independent of us."

He made the remark that "nobody at these times was independent of a railroad."

This was several years before they commenced work here, and it was before the St. Joe road was built.

By inserting on page 108 thereof, at end of testimony of C. E. Perkins, and as testimony of said witness, the following: On the 31st of December, 1872, the directory of the B. & M. R. R. Co. consisted of said J. W. Brooks, pres.; Alpheus Hardy, L. Tuckerman, J. A. Burnham, J. M. Forbes, N. Thayer, R. S. Watson, C. E. Perkins, and J. F. Joy; and at the same date the directory of the C., B. & Q. R. R. Co. consisted
210 of said J. M. Walker, pres.; J. W. Brooks, J. A. Burnham, J. M. Forbes, N. Thayer, R. S. Watson, J. F. Joy, J. N. Dennison, Erastus Corning, J. C. Green, S. Bartlett, and C. F. Cotton.

By inserting on page 105, after the end of paragraph XVII, and as a part of said paragraph, the following:

Plaintiff further offered in evidence part of the record of the district court of Fremont County, Iowa, in the case entitled Fremont County vs. B. & M. R. R. Co., viz, the pleadings and decree of said court, and the opinion and judgment of the supreme court of Iowa, in the same case. (Objected to by defendants as immaterial, irrelevant, and incompetent.) Objection sustained by the court. Plaintiff excepted.

The following is a copy of said decree in the district court:

Fremont County *vs.* The Burlington & Missouri River Railroad Company.	}	No. 126. Ch.

Now at this time this cause coming on to be heard, and the court having heard and examined the allegations of the parties, the evidence submitted, and the arguments of counsel, and being fully advised in the premises, finds the facts stated in the petition to be true, and that the plaintiff is entitled to the relief therein prayed for.

It is therefore ordered, adjudged, and decreed by the court that the title in fee simple to the lands described in the plaintiff's petition, to wit:

(Here follows a description of the lands.)

Containing in the aggregate 12,754 and 19-100 acres, and every part and parcel thereof, is legally vested in the plaintiff; and it is adjudged and decreed by the court that the said plaintiff, to wit, Fremont County, is the owner in fee simple of said lands, and is entitled to the uninterrupted control, use, benefit, and enjoyment of the same.

And it is further adjudged and decreed that the claim of the defendant, to wit, The Burlington & Missouri River Railroad Company, to said lands, and to each and every parcel thereof, is illegal, null, and void.

211 And it is further adjudged that the defendant pay the costs of this suit, taxed at dollars, and that execution issue therefor.

For copy of opinion in supreme court see 22 Iowa, 91–130, and for form of judgment thereon see Abs., 105.

D. H. SOLOMON,
C. B. LAWRENCE,
L. W. ROSS,
Attorneys for Appellant.

Additional assignments of error.

Appellant, with leave of court and consent of counsel, here files four additional assignments of errors:

15. The court erred in sustaining defendant's motion to strike the second paragraph of plaintiff's amendment to the petition, filed Feb. 7th, 1876, to the sustaining of which plaintiff at the time excepted. (Ab., p. 29; amendment to Ab., p. 1.)

16. The court erred in sustaining defendant's objection to plaintiff's questions propounded witness Russell, and in refusing to permit said witness to answer the same, to which ruling and refusal the plaintiff at the time excepted. (Ab., 110–111.)

17. The court erred in sustaining defendant's objection to the record in the Fremont County case as offered in evidence and in refusing said record as evidence, to which ruling and refusal plaintiff at the time excepted. (Ab., p. 105, and amendment to Ab., p. 3.)

18. The court erred in admitting swamp land book in evidence as offered by defendants (Ab., p. 184–'5) against the objections of the plaintiff, to which ruling and admission the plaintiff excepted at the time.

D. H. SOLOMON,
C. B. LAWRENCE,
L. W. ROSS,
Attorneys for Appellant.

212 In supreme court of Iowa. September term, 1876.

THE C., B. & Q. R. R. CO., APPELLANT,
vs.
MILLS COUNTY, APPELLEE.

Appeal from the Mills County district court.

Hale, Stone & Proudfit for appellant; Solomon, Ross & Lawrence for appellee.

APPELLANT'S ABSTRACT.

213 In supreme court of Iowa. September term, 1876.

THE C., B. & Q. R. R. CO., APPELLANT,
vs.
MILLS COUNTY, APPELLEE.

Appeal from the Mills County district court.

Hale, Stone & Proudfit for appellant; Solomon, Ross & Lawrence for appellee.

Appellant's abstract.

On May 15th, 1875, the plaintiff filed in the Mills County district court a petition in the words and figures following:

In the district court of Mills Co., Iowa, Sept. term, '75.

THE CHICAGO, BURLINGTON & QUINCY R. R. CO.
vs.
MILLS COUNTY, IOWA.

Your petitioner, The Chicago, Burlington & Quincy Railroad Co., a body corporate, organized under the laws of the State of Illi-
214 nois, respectfully states that in the month of July, 1868, a suit was pending in the Supreme Court of the United States on appeal from the supreme court of the State of Iowa, wherein Mills County was plaintiff and the Burlington & Missouri River Railroad Company was defendant; that there was involved in said cause the title to certain lands in Mills County, Iowa; that for the purpose of putting an end to further litigation and delay in said cause, the board of supervisors of said county did, on the 13th day of July, 1868, submit to said B. & M. Railroad Co. a proposition for a settlement and compromise of the matters in controversy therein, a copy of which said proposition is hereto attached, marked Exhibit C, and made a part hereof. That on the 27th day of October, 1868, the said B. & M. Railroad Co. duly accepted of said proposition of settlement and compromise, and gave due notice in writing of their acceptance as aforesaid, and in Nov., 1868, the said proposition was duly approved and confirmed by said board and ordered to be spread upon the records of said board, which was done. That by the terms of said contract said County of Mills agreed, among other things, on account of the considerations therein named to pay the sum of ten thousand dollars, which it has hitherto wholly failed to do, though often requested. Your petitioner further alleges that said B. & M. R. R. Co. did do and perform all of the conditions and obligations which it agreed to do and perform by and under said contract of settlement and compromise, and also that said Mills County has done and performed all the conditions and obligations it agreed to do and perform by and under said contract of settlement and compromise, except the payment of the ten thousand dollars, with interest,

for which this suit is brought. That there is now due on said contract from Mills County the sum of ten thousand dollars, with interest thereon at the rate of six per cent. per annum from November 1st, 1868. That since the execution and confirmation of said contract by said county and the B. & M. Railroad Co., to wit, on the 31st day of December, 1872, said B. & M. Railroad Co., among other things, sold, transferred, assigned and set over unto your petitioner herein the contract and claim for said ten thousand dollars and interest thereon, against said Mills County, as provided and agreed to be paid by said contract, and the same is
215 now the property of this plaintiff, all other portions, obligations, and conditions of said contract having been duly complied with and performed by the parties thereto.

Your petitioners therefore ask judgment against Mills County for the sum of ten thousand dollars, with interest thereon at the rate of six per cent. per annum from November 1st, 1868, and for costs of suit.

HALE, STONE & PROUDFIT,
Attorneys for Plaintiff.

Said petition was duly verified as the law directs.

216 EXHIBIT C.

In order to settle and finally adjust the lawsuit now pending in the Supreme Court of the United States, wherein Mills County, in the State of Iowa, is plaintiff, and the Burlington and Missouri River Railroad Company is defendant, and secure the completion of said road through Mills County, via Glenwood, in said county, we, the undersigned, agents of said county, submit the following proposition to the board of directors of said railroad company, to wit:

There are in dispute between the parties to the said lawsuit twenty-three thousand three hundred and sixteen acres. For the purpose of having our proposition understood, we acknowledge that we owe you acres of land to the amount of 23,316; to pay which we have and offer you odd sections, vacant (most of which is a part of the 23,316 acres), and even sections patented to the county and unsold, in the aggregate 9,080 acres; balance of the land due you, 14,236 acres. For further payment we have and offer to you of the odd sections (about all of which is of the 23,316 claimed by you), subject to pre-emption made through the county, acres to the amount of (on which nothing has been paid to the county) 4,660. Of these pre-empted lands we estimate that about one-half of the pre-emptions are fraudulent, and ought not to be recognized, but the county must ask that where bona fide improvements have been made on the same, the pre-emptors must be secured in their right to the same, and have the privilege of purchasing at $1.25 per acre of the county or company, which amount shall, in any event, go to the railroad company. Now you will have land for land, subject only to the pre-emptor's claims, until there will be due you in acres 9,576.

The remainder, 9,576 acres, belong to bona fide settlers and purchasers, who, we must insist, shall be protected by the county. And as we have paid you all the land we have, we offer you for this balance ten thousand dollars in money.

The company should understand that the balance of 9,576 acres is the

land, portions of which it has been settling with our individual citizens for, and there is included in the 9,576 acres all the lands the company has sold to citizen settlers at $1.25 per acre. With this understanding, the $10,000 balance we offer you will be just as much less than 9,576
217 acres as the company has thus sold, and therefore our pay would perhaps amount to $1.50 or more.

It is understood that the said suit now pending shall be continued, by agreement of the parties, from term to term, until the conditions of this contract or proposition shall be complied with.

It is also further understood that the foregoing proposition shall not be binding on the County of Mills, unless said railroad company shall complete said railroad through Mills County via Glenwood and build a depot at Glenwood, in said county, and in case said railroad company shall fail or neglect to build said railroad through Mills County, via Glenwood, and also to build and establish a depot at Glenwood, in said county, then, and in that event, the said lawsuit shall stand for final hearing in the Supreme Court of the United States, the same as if this proposition had never been made. In case the suit shall be settled on the basis of this proposition, each party shall pay their own costs. The manner of transferring the land, whether the county shall deal with the purchasers and pre-emptors, or whether the railroad company under the restrictions indicated, the county is not particular about, but will agree to what may seem most practicable.

The amount in acres, as stated above, may not be exactly correct and probably is not, but it is believed to be nearly so, but we wish it understood that the company shall have all the swamp lands the county now hold or is entitled to in Mills County, Iowa, subject only to the conditions indicated in the foregoing. Witness our hands this July 13, 1868.

WM. HALE,
E. C. BOSBYSHELL,
D. H. SOLOMON,
L. W. TUBBS,
Majority of the Committee.

BURLINGTON, IOWA, *October* 27, 1868.

This proposition is hereby accepted, and the terms and stipulations and conditions are agreed to by the Burlington and Missouri River Railroad Company.

BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY,
By C. E. PERKINS, *Supt.*

Notice of the acceptance of the within proposition by the Burlington and Missouri River Railroad Company has been served on us this 31st day of October, 1868.

D. H. SOLOMON,
E. C. BOSBYSHELL,
WM. HALE,
L. W. TUBBS,
Committee.

218 EXHIBIT D.

To the board of supervisors of Mills County:

The undersigned, appointed by the board of supervisors of Mills County, Iowa, to settle, adjust, and compromise the suit in relation to swamp lands in Mills County, Iowa, wherein Mills County, Iowa, is plaintiff, and the Burlington and Missouri River Railroad Company is defendant, beg leave to report that in accordance with the authority and powers vested in us by your honorable body, we proceeded to the city of Burlington, Iowa, and there submitted to said railroad company the proposition hereto appended, and which was, on the 31st day of October, 1868, accepted by said railroad company, and which we now submit to your honorable body for approval and ratification.

Respectfully submitted, November 9th, 1868.

(Signed) E. C. BOSBYSHELL.
WM. HALE.
D. H. SOLOMON.
L. W. TUBBS.

After giving the report due consideration, it is resolved by the board of supervisors of Mills County, Iowa, at their regular session in November, 1868, that the proposition submitted to the Burlington and Missouri River Railroad Company by our special railroad committee, and the acceptance of the same by the said company be, and the same is hereby, confirmed and ratified, and that the same be spread upon the records of this board.

The ayes and nays being called for, the vote stands as follows:

Ayes—Allis, Forrester, Haynie, Lamb, Utterback, Wing, Ward, Russell, Summers, and Mr. Chairman. Nays none.

219 That on the 9th day of September, 1875, the defendant filed a motion for a more specific statement, requiring plaintiff to state whether the sale, transfer, and assignment of the contract sued on was in parol or by writing, and if by writing, then that a copy of such writing be annexed to the petition; which motion was sustained, and plaintiff had leave to amend.

On Sept. 17th, 1875, plaintiff, by leave of court, filed an amendment to the original petition, alleging that said contract of sale and assignment was in writing, and attaching a copy of the said transfer thereto as Exhibit B. Said contract of sale and transfer so attached to said amendment is in the words and figures following, to wit:

EXHIBIT B.

This indenture of lease and agreement, concluded this 31st day of December, A. D. one thousand eight hundred and seventy-two (1872), by and between the Burlington and Missouri River Railroad Company, a corporation organized under the laws of the State of Iowa, of the first part, and the Chicago, Burlington and Quincy Railroad Company, a corporation created and organized by and under the laws of the State of Illinois, of the second part.

Whereas the Chicago, Burlington and Quincy Railroad Company is the owner of and maintains and operates a main line of railroad extending

from Chicago to Burlington, and is also the owner of various other lines of railroad, both main and branch, situated in the States of Illinois and Iowa, with their appurtenances, and the Burlington and Missouri River Railroad Company is the owner of a main line of railroad extending from the city of Burlington to a point on the Kansas City, St. Joseph and Council Bluffs Railroad, about fifteen miles from Council Bluffs, Iowa, and in virtue of a leasehold from that company runs its trains over that road into Council Bluffs, and it is also the owner or lessee of certain branch railroads connecting with its main line, which it maintains and operates, with their appurtenances, all situated within the State of Iowa; and

220 Whereas said main lines of railroad of said companies, as now constructed and operated, constitute one continuous line of railroad from Chicago, by way of Burlington, to Plattsmouth and Council Bluffs, on the Missouri River, and it is believed to be for the mutual interest of the two companies that the same should be owned, maintained, and operated by a single corporation; and that to secure this end the stock, property, rights, privileges, and franchises of the one should be managed and controlled by the other; and

Whereas, with this view, meetings of the respective boards of directors of said corporations were duly called and held on the third day of October, A. D. eighteen hundred and seventy-two (1872), at which the lease and agreements herein contained were considered and agreed upon, subject to ratification by the stockholders of said companies, respectively, and as a part of such agreement, it was arranged that the share values of the respective stocks should be equalized by the distribution, by the said second party, of twenty-five per cent. on the capital stock in the seven per cent. bonds of this company to its stockholders; and afterwards, at meetings of stockholders of said respective corporations duly called and held for that purpose, the terms of said lease and agreements were approved and ratified, and the execution of this instrument recommended; and at previous meetings of said respective boards of directors, the presidents and secretaries of said companies were directed to execute this agreement and carry the same into effect, provided the same should be ratified by the stockholders as aforesaid:

Now, therefore, this instrument witnesseth that the party of the first part, to accomplish the object aforesaid, and in consideration of the stipulations and agreements herein contained, to be kept and performed by said second party, has granted, demised and leased, and does hereby grant, demise and lease, in perpetuity, to the said party of the second part, its successors and assigns forever, all and singular its railroad situated in the State of Iowa, extending from Burlington, on the Mississippi River,

221 to Plattsmouth, on the Missouri River, constructed and to be constructed, and all branches connected therewith, owned or controlled by it, all rights of way, depot and other lands or interests therein connected with said railroad or branches, all station houses, shops, offices, and other buildings and structures of whatsoever kind belonging thereto or used in connection therewith, together with all fixtures and appurtenances belonging to said railroad, branches, or other property, or in any manner connected therewith; all the equipments of said railroad and branches, including engines, cars, and all other rolling-stock, and all tools, machinery, materials, and every other matter or thing connected with the equipment of said railroad or branches; all rights, privileges, and franchises of said

party of the first part in and to the aforesaid railroad, branches, or other property now held, used, or controlled by it, or which it may hereafter acquire or become entitled to, together with all other property of every kind and description belonging to or appurtenant to said railroad, branches, and to other property, and its right, title, and interest in and to the same and to every part thereof.

And the said party of the first part also, for the aforesaid considerations, hereby grants, bargains, sells, assigns, and transfers to said second party, its successors and assigns, all the lands heretofore granted to it by the general government now remaining unsold, and amounting to about two hundred thousand acres, more or less, and all other the lands and real estate of said first party owned or possessed by it, or to which it may be or become entitled, and all title and interest it may have therein; all contracts, evidences of indebtedness received or held for land heretofore sold by said party of the first part; also all moneys, notes, accounts, evidences of debt, choses in action, and all other the personal property of said first party of whatsoever kind and wheresoever situated. Also all leases of branch roads or connecting roads, or any part thereof, now held and possessed by said party of the first part.

To have and to hold the said leasehold premises, railroad branches,
222 rights, privileges, and franchises in perpetuity, as aforesaid, and said lands and interests in real estate, leases, moneys, contracts, evidences of debt, choses in action and other property above mentioned or intended to be conveyed hereby to said party of the second part, its successors and assigns, forever, as fully in all respects as said party of the first part might have held, used, controlled, or enjoyed the same had this instrument not been made, with full power and authority to collect, receive, have, and use all the rents, proceeds, profits, and income thereof, and all moneys and revenues to be derived therefrom, and appropriate the same in such manner as it or they may deem best, and as shall be consistent with the interests hereof, with full authority to the said second party, in the management and disposition of the railroad and property herein mentioned, to use the name and seal of said first party as full in all respects as it could do had this instrument not been made.

And the said first party also agrees to keep up its corporate organization until the complete and absolute union and consolidation of the stock and properties of the two companies, as contemplated by the parties, shall be effected, the cost of the maintenance of such organization, however, to be paid by the second party.

The said party of the second part, in consideration of the premises, does hereby covenant and agree with the said party of the first part, its successors and assigns, to take immediate possession of said demised railroad and other property herein granted, and to keep said railroad and branches equipped, and maintain and operate the same in such manner as to furnish reasonable accommodations to the public; to pay or cause to be paid all taxes or assessments that may be lawfully levied, charged, or assessed on said railroad and property or any part thereof; to assume all leases, contracts, bonds, and other obligations of whatsoever kind; to pay and discharge all debts and liabilities of every nature, both principal and interest, of said party of the first part as they shall severally mature; to make to the stockholders of said party of the first part and to the stock-

holders of its respective branches the same and same amount of dividends per share that it shall make to its own stockholders, and also to
223 grant and secure to them respectively the same benefits and emoluments of every description that its own stockholders may receive, have, or become entitled to.

Provided, however, that the holder of any of the convertible bonds of said first party who may elect to convert the same, and thus become a party to this arrangement, shall receive, by way of dividend on the stock obtained by such conversion, only such pro rata proportion of any dividend declared next after such conversion as the interval between the date of such conversion and the date of the payment of such dividend bears to the interval between the last dividend of said corporation and the one in which the party so converting may be entitled to participate, and the certificate of stock to be issued on such conversion shall be qualified accordingly.

It is hereby mutually agreed by and between the parties hereto to execute and deliver such further conveyances, papers, and authority as counsel shall deem necessary to more completely effect the objects sought, and to carry out the intention of the parties to this instrument.

In witness whereof the parties hereto have caused this instrument to be signed by their respective presidents, and their respective seals to be hereto attached, and attested by their secretaries, the day and year first above written.

BURLINGTON AND MISSOURI RIVER RAILROAD COMPANY,

{ BURLINGTON AND MISSOURI R. R. R. CO. SEAL. } (Signed) By J. W. BROOKS, *President.*

Attest:

J. N. DENISON, *Ass't Sec'y.*

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,

{ CHICAGO, BURLINGTON AND QUINCY RAILROAD CO. } (Signed) By J. M. WALKER, *President.*

Attest:

A. T. HALL, *Secretary.*

224 STATE OF MASSACHUSETTS,
County of Suffolk, ss:

Be it remembered that on this fourth day of January, A. D. 1873, before me, a notary public residing in the city of Boston, county of Suffolk, and State of Massachusetts, duly commissioned by the governor of the State of Massachusetts to take acknowledgments and proofs of deeds and other instruments in writing, under seal, to be used or recorded in the State of Iowa, personally came J. W. Brooks, president of the Burlington and Missouri River Railroad Company, who is known to me to be the person whose name is signed to the foregoing instrument, who, being by me duly sworn, deposes and says that he resides in the town of Milton, in the county of Norfolk, and State of Massachusetts; that he is president of the Burlington and Missouri River Railroad Company; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is the corporate seal of said company; that it was affixed by order of said company, and that he signed his name to said instrument by like order as president of said company, and acknowledged that he executed and delivered the said instrument as his free and voluntary act for

the uses and purposes therein set forth, and that said company also executed said instrument as its free and voluntary act for the uses and purposes therein set forth.

CHARLES D. DORMAN, NOTARY PUBLIC, SUFFOLK CO., MASS. } In witness whereof I have hereunto set my hand and official seal this fourth day of January, A. D. 1873.

(Signed) C. D. DORMAN, *Notary Public.*

225 On the 17th day of September, 1875, the defendant filed a motion setting forth that there were two actions pending herein which might have been joined, viz: No. 817, equity, wherein Mills County, Iowa, is plaintiff, and the Burlington and Missouri River Railroad Company, the Chicago, Burlington and Quincy Railroad Company, and others were defendants, and this cause, law, No. 927. Wherefore said Mills County moved that the Chicago, Burlington and Quincy Railroad Company show cause why said No. 927, law, should not be consolidated with said No. 817, equity, and in support of said motion reference was duly made to the record in each of said cases then pending in said district court; and,

On the 20th day of September, 1875, defendant, Mills County, filed a motion to transfer this action to equity side of the court, and as grounds of such motion suggested that the answer herein sets up an equitable defense which this court can only determine by sitting as a court of equity, and further asking that this cause be consolidated with No. 817 and that this motion be considered in connection with the motion to consolidate filed heretofore, on the 17th of September, 1875.

And afterwards, said motions to consolidate and transfer came up for hearing, and the court, after argument on the same, made ruling and order in the words following, to wit: "Now, on this day this cause comes on to be heard, and on the motion of defendant to require the plaintiff to show cause why this cause should not be consolidated with the cause No. 817, on the equity calender, wherein this defendant is plaintiff and The B. & M. R. R. R. Co. and others are defendants, and said motion being considered by the court, and no good reason being shown why such consolidation should not be made, it is ordered that this cause be consolidated with said cause No. 817 on the equity calender. To all which plaintiff excepts."

226 On September 28th, 1875, the defendant filed an answer, which is in the words and figures following, to wit:

Answers and cross-petition.

In the district court of Mills County, Iowa. Sept. term, 1875.

THE CHICAGO, BURLINGTON & QUINCY R. R. Co. *vs.* MILLS COUNTY, IOWA.

The defendant, Mills County, Iowa, answering the plaintiff's petition in the above-entitled cause, states:

1st. That the defendant denies each and every allegation contained in the plaintiff's petition, which is not hereinafter admitted or that may be in any manner inconsistent with the statements hereinafter made in this answer.

2nd. The defendant denies that she owes the plaintiff anything either for and on account of the causes and grounds of action set forth against her in the plaintiff's petition, or for any other cause or causes, ground or grounds of action.

3d. As to whether the plaintiff is a body corporate organized under the laws of the State of Illinois, the defendant denies any knowledge or information thereof sufficient to form a belief.

4th. The defendant admits that in the month of July, 1868, there was a suit pending in the Supreme Court of the United States, an appeal from the supreme court of the State of Iowa, wherein Mills County was plaintiff and the Burlington and Missouri River Railroad Company was defendant, and that there was involved in said suit questions which did pertain to and in some degree affect the title to certain lands in Mills County, Iowa. But she owns that said lands, a list of which is hereto annexed and marked Exhibit A, were lands granted by Congress to the State of Iowa, by an act of Congress approved on the 28th day of September, 1850, and entitled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," and which by a subsequent act of Congress, entitled "An act to confirm to the several States the swamp and overflowed lands selected under the act of September 28th, 1850, and the act of the second of March, 1849," approved March 3d, 1857, were confirmed to the State of Iowa, and which and
227 by an act of the general assembly of the State of Iowa, entitled "An act to dispose of the swamp and overflowed lands within this State and to pay the expenses of selecting and surveying the same," passed January 13th, 1853, and other acts of said general assembly supplementary thereto, been granted by the State of Iowa to Mills County as a property to be held for the purpose and uses applied by said Mills County for the purpose of draining and reclaiming the swamp and overflowed lands within her limits. That the title in fee to said lands did rest in the State of Iowa at the date of the passage of the act of Congress first above set forth, to wit, the 28th day of September, 1850, in trust and for the purposes above stated, but nevertheless and notwithstanding these facts and in total disregard of them the said Burlington and Missouri River Railroad Company did by some means succeed in procuring from the Commissioners of the General Land Office of the United States certificates for said lands as enuring to them under certain railroad grants. That the validity of these certificates and all rights in and to said lands were put in issue in said suit, and that after a full hearing of all the facts the district court of Mills County, Iowa, did declare the claim of said railroad company to be void and that the right and title to said lands was in Mills County, Iowa, by a decree rendered on the day of , 18 , a copy of which is hereto annexed and marked Exhibit B, and made a part of this answer. That the said Burlington and Missouri River Railroad Company did appeal from said judgment and decree so rendered to the supreme court of the State of Iowa, and that said judgment and decree of the district court of Mills County, Iowa, was, on said appeal, at the June term, 1867, of said

supreme court of the State of Iowa, affirmed, and that though said cause had been in July, 1868, removed to the Supreme Court of the United States by the said Burlington and Missouri River Railroad Company by writ of error, still said judgment of the supreme court of Iowa, so rendered as aforesaid, was then a valid and subsisting judgment, and had not then been in any manner altered, vacated, modified, or changed, and was not in any manner affected or suspended or superseded as a valid and subsisting judgment, by the pendency of said writ of error in the Supreme Court of the United States. That the lands so in dispute and con-
228 tained in Exhibit A hereto attached, did not embrace all of the swamp lands of Mills County, Iowa, but were only the alternate and odd numbered sections, falling within certain limits, and that at the date of the instrument attached to plaintiff's petition as Exhibit C thereto, to wit, July 13th, 1868, Mills County owned other swamp lands than those contained in said Exhibit A.

5th. That by an act of Congress entitled "An act making a grant of lands to the State of Iowa in alternate sections, to aid in the construction of railroads in said State," approved May 15th, 1856, certain lands, interests, rights, powers, and privileges were thereby conferred upon the State of Iowa to aid in the construction of a railroad from Burlington, on the Mississippi River, to a point on the Missouri River near the mouth of Platte River, and for other purposes. That so much of said lands, interests, rights, powers, and privileges as were granted and conferred under and in pursuance of said act of Congress to aid in the construction of said railroad, were by an act of the general assembly of the State of Iowa, entitled "An act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'An act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State, approved May 15th, 1856,'" which was approved on the 14th of July, 1856, granted and conferred upon the said Burlington and Missouri River Railroad Company which was then, as it is now, a body corporate, created by and existing under the laws of the State of Iowa. That the said Burlington and Missouri River Railroad Company did within 90 days after the passage of said last-mentioned act of the Iowa general assembly assent to and accept the provisions of said act in the manner in which they were by said act required to do. That under and by virtue of these acts and grants of lands and other acts and grants both by the general assembly of the State of Iowa and the Congress of the United States the said Burlington and Missouri River Railroad Company has had and received acres of lands donated to them for the purpose of aiding them in the building and completing of their said railroad other than the lands described in Exhibit A thereto.

229 That in order to fix and designate the particular parcels and tracts of the public lands that were to be covered by and embraced in said land grant the line and route of said road was required to be definitely fixed and located, and by the Iowa act on or before the first day of April next after the passage thereof, and plaintiff avers that the final location of the line and route of said railroad through the county of Mills as well as every other county through which it passed, was duly, legally, and definitely fixed and determined so as to secure to said Burlington and

Missouri River Railroad Company the said lands, interests, powers, and privileges to them granted and conferred as is above stated, and on the 27th day of March, 1857, and that thus the said Burlington and Missouri River Railroad Company become by such acceptance and location bound under the obligation of a contract to the State of Iowa and to all the people and citizens thereof, and more especially to those of the county of Mills, to build and construct its said railroad on said line and routes through the county of Mills as well as all the other counties through which it passed. That notwithstanding the said solemn contract with the State of Iowa and the said magnificent grant of lands it had received to enable it to build and construct their said railroad on the line and route so definitely fixed as is herein above stated, said Burlington and Missouri River Railroad Company, prior to the commencement of work upon their road-bed in Mills County, through its officers, agents, and parties in its interests by means of and by pretending to change its original articles of incorporation, so as to permit of two or more points of accommodation on the Missouri River in place of one point, as fixed in its original articles, and by scare and mock lines, and other fraudulent devices and pretences, such as saying and causing it to be reported, and feared at least, if not believed, that the company were going to construct the road above or below Mills County, and not centrally through it on their old surveyed route, and this because the county had shown hostility to them by sueing them, referring to the suit above described, and other sayings and hints to the same or similar effect, resorted to for the purpose of creating fear and alarm in the minds of the people of Mills County, and especially the members of the board of supervisors, lest the county would lose the road, and thus be deprived of its just rights and expectations under which its settlement and improvements had been made for the ten years then past, did threaten that unless other inducements were offered and given to them the company would abandon its said fixed line and route through Mills County, and go to other rival points above and below said line, and so the defendant admits that its then board of supervisors, influenced and alarmed by said fraudulent practices, did entertain the proposition for a contract, which is attached to the plaintiff's petition as Exhibit C thereto. But they deny that said proposition for a contract was for the purpose, as is alleged in the plaintiff's petition, *for the purpose* of putting an end to further litigation and delay in said cause, but aver that said proposition for a contract was entertained by its said members of its board of supervisors for the purposes which are expressed in the instrument itself, "To secure the completion of the Burlington & Missouri River Railroad through Mills County, a proposition to devote swamp lands to the building of a railroad in Mills County."

6th. The defendant says that she is in no manner bound by said instrument, a copy of which is attached to the plaintiff's petition as Exhibit C, and says that the same is not her act and contract, and that she is in no manner bound thereby; that the offer of ten thousand dollars therein made is not their offer, and she denies that the board of supervisors of Mills County had any right, power, or authority to make such a contract as is Exhibit C for her, and especially does she deny their right to bind her to pay the sum of ten thousand dollars by any such contract; she denies that she agreed among other things *a*n account of the considerations named in said instrument to pay the

sum of ten thousand dollars, for she says that said proposition is and ever has been void as a contract against her, this defendant, because she says that the lands which were the subject-matter thereof had, under and by virtue of the statutes above cited, became invested in her as a trust property as early as the year 1853, for the purpose of draining and reclaiming the swamp and overflowed lands within her limits, as swamp lands, and this was a proposition to devote the same, and ten thousand dollars in money, to the making of a railroad through Mills County,
231 and none of said lands or proceeds thereof could be devoted without the question whether the same should be so devoted shall have been first submitted at some general or special election to the people of the county, and she says that the same was not so submitted until the September meeting of the board of supervisors of Mills County, Iowa, in the year 1871; and she says that at the September meeting an order for the submission of said contract between Mills County and the Burlington & Missouri River Railroad Company (a copy of which is thereto attached and marked Exhibit C) to the voters of Mills County, Iowa, at the ensuing general election to be held on the 10th day of October, 1871, submitting to them the question whether the amount of swamp land specified in said contract and the proceeds thereof to the amount of ten thousand dollars should be devoted to the purposes set forth in said contract was made, and she avers that said order of submission was duly complied with and the vote was duly taken as directed, and that there were thirteen hundred and eighty-eight votes cast at said election for and against affirming said contract so submitted, and there was cast for affirming but three hundred and fifty-seven (357) votes, while there were ten hundred and thirty-one (1031) votes cast against affirming said contract, so they aver that said proposition and contract was defeated, rejected, and repudiated by Mills County, Iowa, and that she refused to ratify and affirm the same at the first opportunity which was afforded her of passing upon the same in the manner provided by law, and she avers that she has never assented thereto, but has refused to assent thereto.

7th. The defendant states further that the instrument Exhibit C attached to the plaintiff's petition was not a compromise of the suit which was then pending in the Supreme Court of the United States, as is stated and claimed in the plaintiff's petition, for they say that notwithstanding said instrument said cause was allowed to come on to be heard in the said Supreme Court of the United States on the transcript of the record from the supreme court of the State of Iowa, and was argued by counsel, and that on consideration whereof it was by said court, on the 7th day of February, 1870, ordered, adjudged, and decree' that the decree of the said supreme court in said cause be and the same was affirmed, with
232 costs, as will more fully appear by reference to the docket and record entry of the said Supreme Court, a copy of which is hereto attached and marked Exhibit D, and made a part of this answer.

8th. The defendant denies that she has done and performed any of the conditions of said proposition for a contract. She admits that certain deeds for a large amount of the swamp lands have been signed and delivered to the defendant by persons claiming to act for her as a board of supervisors, but she says that said deeds are not hers, and that she has repudiated them, and that she has instituted suit which is now pending and

undetermined in this court in equity, asking to have such conveyances declared null and void; she denies that she has ever executed and confirmed said contract.

9th. She denies that the Burlington and Missouri River Railroad Company has done and performed anything in performance of said proposition, except such acts as they were in duty bound and in law ought to have done and performed had no such instrument have been drawn.

10th. She says said instrument is and has ever been without any consideration, and that she has never received any consideration for anything that is claimed from her under and in pursuance of said instrument, Exhibit C, and avers specially that she has never received any consideration whatever for the supposed promise to pay $10,000 contained in said instrument.

11th. She states that there are thousands of acres of swamp and overflowed lands within the limits of Mills County, Iowa, that are not reclaimed and that all the swamp lands and all of the proceeds of the sales thereof are needed for the purpose of draining and reclaiming the same, and constructing the necessary levees and drains to reclaim the same, and that some levees and drains have been constructed by private enterprise in consequence of a lack of swamp land funds to do so with.

11th. She states that the question upon the promise to pay the said ten thousand dollars which is declared on in the plaintiff's petition has never been submitted to the people of Mills County for a vote thereon,
233 and has never been authorized and sanctioned by any such vote, as the law requires, and is contrary to the statute and public policy.

12th. She states that the ten thousand dollars and even sections embraced in said Exhibit C in plaintiff's petition were in no manner embraced in the former suit then pending in the Supreme Court of the United States, and that the whole of that which is pretended to be claimed of this defendant, to wit, the swamp lands is and was a trust property, and there was no power in the board of supervisors to so surrender the whole of said property in a pretended compromise of said suit, that as a compromise said proposition was and is unjust and unfair in all its parts, illegal and inequitable, and that she ought not in conscience to be bound by it or to be made specifically to perform the same.

13th. She further says that said proposition, to wit, the instrument, Exhibit C to plaintiff's petition, if considered a contract, is void as such, and ought not to be enforced as against her, because she says the same was, if a contract at all, an entirety, and that the considerations and inducements for the promise claimed as against this defendant are not severable, and that one, to wit, the building of a railroad, was and is illegal, without popular sanction at an election.

14th. She further states that there is now a former action pending in this court in equity, entitled Mills County, Iowa, plaintiff, vs. The Burlington and Missouri River Railroad Company et al., defendants, which was commenced on the 29th day of January, 1874, in which the invalidity of the instrument, Exhibit C to plaintiff's petition, is asserted by plaintiffs, and in which the chief object sought by the plaintiff is to have said instrument in all its parts declared to be and have been null and void as against this defendant, and that this plaintiff has appeared in said action, and had so appeared long prior to the institution of this suit, and filed

therein its answer as a party thereto, putting in issue directly the validity of said instrument, which answer was filed by the plaintiff in said former action on the 13th day of April, 1875; all of which will the
234 more fully appear, reference being had to the record and proceedings of said former action, which is still pending and undetermined in equity in this court, which are referred to and asked to be considered as a part of this answer, and so she says that the pendency of said former action is and should be considered and treated as a bar to this action, and this action should therefore be dismissed for that reason; for which the defendant here prays.

The defendant, in view of the premises and of the facts herein above set forth, asks that this her answer shall be treated not only as her answer to the plaintiff's petition, but as a cross-petition in equity, and that this court may, as a court of chancery, consider the same and declare that she, the defendant, is not bound by said instrument, Exhibit C to plaintiff's petition; that the same is not and never was her contract; that the board of supervisors had not power to make and bind her thereby; that the same is and was unjust, illegal, and void, and that the plaintiff shall hold nothing in this action, and for such other and further relief as to the court may seem proper, with judgment for the costs herein expended.

C. B. LAWRENCE,
L. W. ROSS,
D. H. SOLOMON,
Attorneys for the Def't.

235 EXHIBIT D No. 39.

Supreme Court of the United States. December term, 1859.

THE BURLINGTON AND MISSOURI RIVER RAILroad Company, plaintiff in error,
vs.
MILLS COUNTY, IOWA.
} In error to the supreme court of the State of Iowa.

This cause came on to be heard on the transcript of the record from the supreme court of the State of Iowa, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said supreme court in this cause be, and the same is hereby, affirmed, with costs.

7th of February, 1870.

True copy. Attest:

[SEAL.]

D. W. MIDDLETON,
Clerk Sup. Court U. S.

STATE OF IOWA, *Mills County:*

I, John Barbour, being present, duly sworn, on my oath say that I am a member of the board of supervisors of said Mills County, Iowa; that I am familiar with the matter' set forth in the foregoing answer and cross-petition, and that the same are true, as I verily believe.

JOHN BARBOUR.

Sworn to before me and subscribed in my presence by the said John Barbour the 20th September, 1875.

J. SOLOMON,
Notary Public.

236 On Feb'y 26th, 1876, the court rendered judgment in favor of Mills County, and gave plaintiff 60 days to file bill of exception; to which holding the C., B. & Q. R. R. Co. duly excepted, and on the 20th day of April, 1876, the C., B. & Q. R. R. *R.* filed said bill of exceptions; was signed by the court, and filed by the clerk on April 22nd, 1876. On August 2d, 1876, notice of appeal to the supreme court was duly served and appeal bond filed.

237 ABSTRACT OF THE TESTIMONY.

Testimony of B. F. Buffington.

Is 45 years of age; resided in Mills County 20 years; principal business, that of farming, but now a grain-dealer; was a member of the board of supervisors of Mills County during the years 1861, 1863, 1869, 1870, 1871, and 1872. Was a member of the board during the whole time that the contract of settlement between Mills County and the B. & M. R. R. R. Co. concerning the compromise of a lawsuit about swamp lands was being adjusted and *and* closed up, so far as executing and exchanging deeds was concerned. (Objected to by plaintiff" counsel because incompetent, irrevelant, and immaterial.) The contract of settlement, marked as Exhibit C, to the petition of the C., B. & Q. R. R. Co., was treated and regarded by the board of supervisors during the period of adjustment as a compromise and a final settlement of the matter. (Objected to, same as above.) The deeds made in pursuance of the contract of settlement by the county were made to the B. & M. R. R. R. Co. Cannot say whether all deeds made by the R. R. Co. were made to the county or some of them to individuals.

Cross-examination:

While I was a member of the board the company made a demand of the county, through the board, for money due them under the contract. I do not remember the officer who made the demand, nor the date when it was made. The board ordered a submission of the matter to the people at an election.

I understood that one of the purposes of the instrument marked Exhibit C, before referred to, was in part the building of a railroad through Mills County via Glenwood. I have not myself ever had a dollar's interest in any of the lands. I have two or three friends who have bought some of the lands. I was not a member of the board at the time the contract was made. The question of ratifying said contract was submitted to the people and rejected.

Redirect examination:

238 Question. State whether or not this vote was had after the railroad company had conveyed to the county or to other persons all of the lands which it was to convey under said contract, and after it had complied with all the conditions and obligations which it assumed and agreed to comply with by the terms of the contract.

(Objected to by plaintiff's counsel as leading, suggestive of answer, and calling for the opinion of witness, incompetent, irrelevant, and immaterial.)

Answer. My recollection is when the vote was taken the railroad company had deeded most, if not all, the lands it had agreed to deed under

the contract, and, as I understood, the railroad company had fulfilled the condition of the contract on their part.

Ques. Was or was not that the understanding of the board at the time of the submission to the people referred to?

(Objected to same as above.)

Ans. It was, so far as I know.

At the time of submitting the contract to a vote of the people, at the June session, 1871, the B. & M. R. R. R. Co. had executed deeds to most, if not all, the lands they were to convey under the contract, and had built the road through Mills County via Glenwood.

(Objected to by plaintiff's counsel, same as above.)

Recross-examination:

The board had no other authority that I know of for making these deeds of the swamp lands to the B. & M. R. R. R. Co. than the contract of settlement before referred to.

Ques. Now, Mr. Buffington, that instrument provided, among other things, that the proposition it contained should not be binding on Mills County, unless the railroad company should complete its road through Mills County via Glenwood, and build a depot at Glenwood; and in case it should fail or neglect to do so, in that event the lawsuit should stand for final hearing, the same as if the proposition had never been made. Now, would you, as a member of that board, have conveyed the swamp lands in controversy to the railroad without a compliance with that condition, to wit, the building of its road through Mills County via
239 Glenwood?

(Objected to by defendant's counsel because not proper cross-examination, immaterial, and because it seeks the opinion of the witness and does not tend to prove any present or past fact, is entirely speculative, remote, and irrelevant.)

Ans. As a member of the board, I should not have consented to have deeded any of the lands to the railroad company without a full compliance on the part of the railroad company with all the conditions, including that condition.

The contract had not been submitted to a vote of the people at the time of making the deeds.

Testimony of Bennett Creech.

Is 41 years of age; a resident of Mills County, and by occupation a farmer. I was a member of the board. I took my seat as such member January 1st, 1869; I served until the fall of 1872; I was a member of the board during the adjustment of the contract of settlement between Mills County and the B. & M. R. Railroad Co. As far as I understood it, that contract was treated as a settlement and adjustment of the swamp-land question between Mills County and the B. & M. R. R. R. Co., and the settlement was effected while the suit was pending in the courts as to title in the land. I understand that this compromise was made between the railroad co. and the county, by them entering into the agreement marked Exhibit C to the question of the C., B. & Q. R. Co.

The board of supervisors, during the adjustment of said contract, did

treat the same as a compromise and final adjustment of the matters in controversy, pending in the Supreme Court of the United States, in a suit between Mills County and the B. & M. R. R. Co. and deeds were made by the B. & M. R. R. Co. to Mills County and also by Mills County to the B. & M. R. R. for at least a portion of the land, for the purpose of carrying out that contract.

Cross-examination:

I was not a member of the board when the contract of compromise was made. The contract was submitted for ratification to a vote in 1871, after the execution of all the deeds except the last one, which was
240 executed by the board at the time the order of submission was made. I was a member of the board at the time of the canvass of the votes on the ratification of the contract.

Ques. State the result of the vote cast at that election?

(Objected to as not proper cross-examination and not best evidence.)

Ans. The majority of the votes cast were against the contract.

I authorize T. P. Ballard to attach a copy of the election record showing this vote to my deposition. I mean by the adjustment of the contract, the subsequent carrying out of the same by the parties.

Redirect-examination:

At the time of the submission to a vote of the people of Mills County, for approval or disapproval of said contract referred to as Exhibit C, the B. & M. R. R. Co. had complied with all of its obligations contained in said contract.

From the time I took my seat as a member of the board, up to the time the question was submitted to a vote of the people it was treated as a compromise and settlement of that swamp-land controversy and had been by both parties carried out in good faith, as far as I know. If it had not been for the conveyance of the lands described in Exhibit E to the answer of the C., B. & Q. R. R. Co. by the B. & M. R. R. R. to Mills County I would not have consented to the conveyance of the lands in controversy to the B. & M. R. R. Co. If the B. & M. R. R. Co. had refused to convey the lands falling to bona fide pre-emptors, or to purchasers from the county at $1.25 per acre, under the contract, I would not have consented, as a member of the board, to a conveyance of the lands in controversy. In short, if they had refused to comply with any conditions and obligations which it assumed and agreed to perform under the contract I would not have consented, as a member of the board, to a conveyance of the lands in controversy. The company did comply with all the conditions of the contract of settlement and compromise on its part before there was an order made to submit to a vote of the people.

H. C. Watkins' testimony.

I was appointed by the board of supervisors of Mills County to
241 aid in the adjustment and carrying out of the contract of settlement of a suit between Mills County as plaintiff and the B. & M. Railroad Co. as defendant concerning the title to certain lands, which contract of compromise was made in November, 1868, by the parties, while said

suit was pending in the Supreme Court of the United States. I examined the swamp land records and other records of Mills County, and prepared lists of lands which each was to convey to the other under and in pursuance of the terms of the agreement. In settling upon these lists we not only had recourse to the records of the county, but we called upon all parties in the county having pre-emption claims to any swamp lands to present the same to others and myself at a time appointed by public notice, previously given, when we would determine as to the bona fides of their claims. Wm. Hale and myself acted for the county, and D. M. Smith and H. A. Copeland acted for the B. & M. R. R. Co. Exhibit C attached to the petition in this action is a copy of the contract of settlement referred to. At the time appointed many citizens appeared and presented their claims, most of which were recognized by the parties as bona fide. A few were rejected.

Exhibit C, attached to the amended answer, I think, is a copy of the contract of settlement. From time to time I made reports of lists of lands to the board which the county was to convey under the contract, and I think our reports were satisfactory in each case, and conveyances made accordingly. The contract was treated as a settlement of pending litigation between the parties. Mills County had sold, or contracted to sell, most of the lands in controversy before the making of the contract. Many of the lands were occupied by actual settlers prior to making the contract. There was a good deal of feeling felt by the purchasers from the county as to the result of the suit. The law firm of which I am a member has been retained in a suit against one Jackson, in this county; the issue is which is substantially the same as those involved in this action. I was in favor of ratifying the contract when that question was submitted to a vote of the people. I think the securing of the building of the railroad through Mills County via Glenwood was in our minds, as citizens, when the contract was made. Fears were entertained by many that the road would not be built centrally through Mills County. I do not re-
242 member of hearing any officer or agent of the company say that as the people of the county had shown hostility to the company by sueing them the road might not be built through the county, or anything in regard to such a result. I cannot be certain as to dates, but my recollection is that not long before the contract was finally settled upon in November, 1868, there were some surveying parties, who, I suppose, was seeking permanent location for the line of the road.

Testimony of W. H. Taft.

Is 46 years of age and at present I am the auditor of Mills County. I have in my possession two deeds of lands made by the B. & M. R. R. R. Co. to Mills County, in pursuance of the contract of settlement of a lawsuit between Mills County and the B. & M. R. R. Co., while the same was pending in the Supreme Court of the United States, and I have produced them and ask that they be attached to my deposition as Exhibits A and B.

(Below we give a copy of the deeds, both being alike, leaving out only the description of the lands and the concluding portion, which is in the usual form.)

Know all men by these presents that, for the consideration of the sum of one dollar and for the purpose of carrying out the terms and stipulations of a contract heretofore made with Mills County, in the State of Iowa, the Burlington & Missouri River Railroad Company does revise, release, and forever quitclaim to said Mills County, in the State of Iowa, the following-described land, situated in the county of Mills, and State of Iowa, to wit:

This deed is dated January 30th, 1871. The other one is dated October 15th, 1869.

Testimony of J. H. Wing.

I came to Mills County in 1858. I was a member of the board of supervisors of Mills County in 1868. I was a member of the board when a committee was appointed to submit a proposition to the railroad company for the purpose of settling a lawsuit about the title to a portion of the swamp lands in this county.

Ques. State what the object of the board was in appointing a 243 committee.

Ans. To settle this lawsuit.

Ques. You may state any causes that led to the submission of the proposition.

Ans. I thought it was for the best interest of the county.

Ques. What were the causes that led you to believe it was for the best interest of the county?

Ans. The suit was still pending, and there was a chance that the county might lose it. Considerable expense was attached and indirectly harassing the settlers. From the fact the county had sold to some of the settlers lands which they purchased, as they thought, in good faith, and paid for in full, and the title, so long as that suit was pending, was doubtful to their lands.

Cross-examined:

Is that the only inducement you can think of, Mr. Wing, or was the inducements about as it stood in the contract itself?

Ans. I have not seen the contract since that time.

Ques. Don't you know perfectly well that the only object was to secure this road to Glenwood?

Ans. We would not have made the settlement, or allowed that committee to have made it, without we had felt sure that we were settling the suit and leaving no loop-hole for future controversy.

Ques. In regard to getting the railroad to Glenwood, had that anything to do with it?

Ans. Well, I did not consider that.

Ques. Don't you know that that was one of the objects? Do you swear that it was not?

Ans. I would not swear that it was or was not, as far as I was concerned myself.

Ques. Don't you remember that there was some alarm here felt in reference to where that road would go?

Ans. I think there was, sir.

Ques. Don't you remember a survey that was made somewhere during that summer?

Ans. I do; from Red Oak to Council Bluffs.

244 Redirect examination:

Mr. Wing, was not that matter put in about the railroad being centrally built through the county just because we thought since we were making the proposition that we would get all we could?

(Counsel for plaintiff objects to that as incompetent, because it is an attempt to impeach the record. Objection sustained. Defendant excepts.)

Ques. Had the R. R. co., prior to the 20th of June, 1868, done anything, that you know of, or ever did know of, that influenced your action or the action of the board in submitting that proposition?

Ans. I recollect of none.

Recross-examination:

Ques. Don't you know that that Mud Creek survey was then in progress from Red Oak to Council Bluffs?

Ans. I did not; no, sir.

Ques. You swear it was not progressing along near your place as early as the first of June?

Ans. I do, sir.

Ques. Was not that survey in progress?

Ans. That I cannot say.

Ques. You do not know, then, whether it was before that time that that survey had been commenced?

Ans. No; I do not know; the first I knew of that survey was hearsay, and it was some time after that before I met Mr. Havens and became acquainted with him.

Question (by Mr. HALE). That was after the 20th of June, 1868, that you first heard of it, was it not?

Ans. I said I did not know when Havens commenced working on thai survey. I am quite positive I never heard of it until after that propostion was submitted.

Question (by Mr. Ross). What do you mean by "submitted"?

Ans. The appointment of the committee.

I am positive that the Havens surveying party had not left that
245 line prior to the 3d of August, 1868, from the fact that I had thrashed grain on the 3d, and they came to my house to get grain for their teams. This is the first time I had met Mr. Havens. A flight of grasshoppers which we had at that time particularly fixes the date in my mind.

Testimony of S. M. Williams.

I have lived in Mills County nearly 10 years. I was a member of the board of supervisors in 1867 and 1868. I was a member of the board at the time a committee was appointed to confer with the R. R. Co. in regard to the settlement of the lawsuit. The object was to settle the lawsuit and secure to the actual settlers swamp lands in the county.

Ques. State whether or not the railroad company at that time had done anything that did have the effect of influencing your action in that matter.

Ans. I was not influenced in that matter by any particular thing, only what I thought was to the interest of the county at that time.

Ques. And it was for this purpose of securing the two objects that you have named?

Ans. Yes, sir.

Ques. Are you cognizant of anything that the railroad company had done at any time to influence the action of the board at the time the committee was appointed?

Ans. No, sir.

Ques. Mr. Williams, I will ask you this, in reference to this other matter that has been spoken of, whether the board did not just put in that as a condition, because they thought if they were going to make a proposition of settlement they would get the best terms they could get? Was not that the way it came in there?

Ans. We were working for the county, and wanted to make the best bargain for it we could, and if we could get the railroad through the county, and get the titles to swamp land settlers in the county, we thought we were doing a pretty good day's work.

Testimony of J. M. Powell.

Ques. State what these books are.

246 Ans. These are books belonging to the auditor's office. They are a record of the entries of pre-emption, and also of the sales of the swamp lands in the county.

Ques. Are there any other swamp land records in this county?

Ans. None that I know of.

Cross-examination:

Ques. I will ask you to state if these are not the only records of sales and pre-emptions of swamp lands in Mills County that were sold to individuals?

Ans. They are the only ones I have knowledge of. I am the auditor of this county.

Question (by Mr. Ross). You mean except record of deeds of sales?

Ans. Well, I took that as applying to the auditor's office, excepting the deeds of sale.

Question (by Mr. HALE). What deeds do you mean?

Ans. After the land is sold and paid for it is patented, deeded to the individual, a patent made under the order of the board of supervisors to the individual purchasing, and that deed is placed on record in the recorder's office.

Ques. Are there any records in the auditor's office showing what lands were patented? Do these show that?

Ans. No, sir; these do not show that.

Ques. What book have you there showing that?

Ans. There is no book down there that will show all of it.

Question (by the COURT). Do you offer the whole of the books, Mr. Hale?

Ans. I offer the whole of the books so far as they relate to the list of lands conveyed to Mills County or to individuals.

(Object overruled. Plaintiff excepts.)

To avoid expense and save time, counsel have agreed in writing that samples of the swamp land records of Mills County may be exem-
247 plified, and that such samples shall supply the absence of the whole record, which would show that prior to the institution of the first suit by Mills County against the B. & M. R. R. Co., about 9,000 acres of the lands in controversy in that suit had been disposed of by the county.

The agreement referred to is as follows, and the samples are attached as exhibits:

Stipulation.

MILLS COUNTY
vs.
THE B. & M. R. R. R. Co., THE C., B. & Q. R. R. Co., and others.

THE C., B. & Q. R. R. Co.
vs.
MILLS COUNTY.

It is hereby agreed and stipulated by the parties to each of the above-entitled causes that the swamp-land records of Mills County which were introduced in evidence on the trial of said causes by the defendants in the cause first above entitled, and by the plaintiff in the cause last above entitled, and which were identified as the original records by J. M. Powell, the county auditor, show entries similar to those shown and exemplified on Exhibit A, hereto attached, and that about 9,000 acres of the land that was in controversy in the former suit that was affected by the contract or proposition, the validity of which is involved in these actions, was disposed of by the county in the manner shown by said swamp-land records, an exemplification or sample of which records is shown on Exhibit A aforesaid. That in cases of what purports to be sales by the county a certificate of purchase was given to the purchaser, a correct form of which is hereto attached, and marked Exhibit D, and that in case of pre-emptions, a pre-emption certificate was issued, a correct form of which is hereto attached, and marked Exhibit E. This agreement and stipulation is made for the sole purpose of avoiding the necessity of exemplifying the whole of said swamp land records in these cases, the exhibits hereto attached being samples of what they show. No other right is waived or in the least affected by this agreement, and this agreement is intended to supply samples of the testimony which might have been gleaned from the swamp-land records,
offered but not designated as stated on appellant' abstract, page 184
248 and 182; and it is further agreed that plaintiff, at the time of offering said book, objected to the same as irrelevant, immaterial, and incompetent; the court overruled the objections, and that the plaintiff at the time excepted.

L. W. ROSS, *Att'y for Mills County.*
HALE, STONE & PROUDFIT,
Att'ys for C., B. & Q. R. R. Co.

EXHIBIT A.

November 26th, 1855, Harvey W. Summers purchased the E. ½ of the NE. ¼ of section 33, township 71, range 41.

(Signed) WM. SNUFFIN, *Clerk.*

November 28th, 1855, William McElroy entered the NW. ¼ of the NW. ¼ of section 3 in township 73, range 40, containing $35\frac{85}{100}$ acres. Received $44.80.

(Signed) WILLIAM SNUFFIN, *Clerk.*

December 5th, 1855, sold Eli Bates the NE. ¼ of section 25, and received two hundred and fifty dollars, and duplicate issued November 15th, and the west half NW. ¼ sec. No. 25 and the W. ½ NW. ¼ sec. 25, and the east ½ of the NW. ¼ of section No. 30, in township No. 72, range No. 41, on time.

(Signed) WILLIAM SNUFFIN, *Clerk.*

December 5th, 1855, sold Jas. J. Robbins the NW. ¼ of SE. ¼ of section No. 23, t'p 72, range No. 41. Received fifty dollars, and duplicate No. 17 issued for the same.

(Signed) WILLIAM SNUFFIN, *Clerk.*

249 EXHIBIT E.

Certificate of pre-emption.

STATE OF IOWA, *Mills County, ss:*

This is to certify that has this day proved before me, and to my satisfaction, a good and sufficient pre-emption right to the following land, to wit, which is a part and parcel of the swamp and overflowed lands of said county and State.

Given under my hand with the seal of my office affixed this day of , 185 .

[SEAL OF COUNTY.]

, *County Judge of Mills County, Iowa.*

EXHIBIT D.

No. .] [$.

STATE OF IOWA, *Mills County:*

CLERK'S OFFICE, GLENWOOD, *day of* , 185 .

Received of the sum of dollars and cents in full for the quarter section of township , range number , being a part and parcel of the swamp and overflowed lands of Mills County, Iowa.

[SEAL.] , *Clerk.*

250 *Testimony of Wm. Hale.*

I reside in Glenwood, Mills County, Iowa; am a lawyer by profession;

have lived in the county 17 years; I represented Mills County in a lawsuit pending between the county and the B. & M. R. R. Co. The suit was brought in 1862 or 1863 by Mills County against the B. & M. R. R. Co. The record of the suit to which I refer has already been introduced in evidence.

The suit was begun in the district court of Mills County. It was carried to the supreme court of *of* the State, and from there to the Supreme Court of the United States. There was a proposition made for a settlement of that lawsuit while it was pending in some of these courts in 1866. I was authorized by the board of supervisors to submit a proposition to the R. R. Co. for a compromise of the suit, which I did in June, 1866. The contract that I then submitted is similar in terms to the one in controversy. It was not accepted. On the 20th day of June, 1868, Mr. D. H. Solomon, E. C. Bosbyshell, L. W. Tubbs, and myself were appointed a committee by the board of supervisors of Mills County to submit a proposition for a settlement of the suit that was then pending in the Supreme Court of the United States.

In the forepart of the month of July, 1868, Mr. Bosbyshell, Mr. Solomon, and myself went to Burlington, and there submitted the proposition to Mr. C. E. Perkins, the general sup't of the B. & M. R. R. Co. at that time. We returned, and on the 31st of Oct., 1868, we were notified in writing of the acceptance of the proposition, and in a day or two we reported our action to the board of supervisors with the acceptance of the R. R. Co., and our action in the matter was ratified by the board.

Soon after the ratification of this contract I told M. Harvey, or wrote him a letter, as he was going to Washington, D. C., to inform Mr. Thomas Ewing, of Ohio, who was associated with me in the case of Mills County, of the fact that this proposition had been accepted; and I also wrote to Mr. Ewing about that time.

Wm. Hale recalled.

Ques. I will ask you to state if you have any knowledge of the
251 whereabouts of these letters, in your correspondence with Thomas Ewing.

Ans. I do not. I supposed they were in the office, where I could lay my hand upon them, until last night and this morning. They were taken from the file for the purpose of looking up a matter of fees in that case, for Mr. Williams, in representing the estate of Mr. Ewing, but I have not seen them since. I will say this, that I had a correspondence with Mr. Ewing in regard to the case after the settlement. I know that he knew of it, but whether it was a distinct reply to that I cannot now swear. I know that he knew of it by correspondence, I think before the 12th of April, 1869 (I am confident he did afterwards), and I know the matter was referred to in his correspondence, that nothing more was to be done with the case; that it was settled. I remember that fact distinctly.

Cross-examined:

Ques. Have you made search yourself personally?

Ans. I have not; I can do that yet. Mr. Proudfit, my partner, looked for them last night and this morning, I have not made search myself.

(Counsel for defendants offers in evidence the letters to Thomas Ewing from Mr. Hale, dated April 12th, 1869, of which a copy of the press copy is hereto attached marked Exhibit C. Objected to as immaterial, irrelevant, and incompetent. Objection overruled. Plaintiff excepts.)

(Copy.)

GLENWOOD, IOWA, *April 12th*, 1869.

Hon. THOMAS EWING,
Washington, D. C.:

MY DEAR SIR: I am in receipt of yours of the 8th inst. I requested Hon. J. A. Harvey, now in Washington, and who is att'y for Fremont County vs. B. & M. R. R. Co., to inform you that the case of Mills Co. vs. B. & M. R. R. Co., to which you refer, was, in July last, settled by the county and R. R. authorities. It was agreed that the case should be continued from term to term until it should be ascertained that the B. & M. R. R. Co. would comply with the conditions of the settlement.

Respectfully,

WM. HALE.

252 *Testimony of D. C. Briggs.*

I am a resident of Silver Creek T'p, Mills County, Iowa; have been a resident of Mills County 21 years. I was a member of the board of supervisors from Silver Creek T'p one term (two years). I do not recollect exactly, but think it was the years '67 and '68, or '68 and '69.

I think I was a member of the board of supervisors in June, 1868. If there was a committee appointed to submit a proposition of a compromise of a lawsuit concerning swamp lands, then pending in the Supreme Court of U. S. between Mills County and the B. & M. R. R. Co., I was absent on that occasion. I was a member of the board of supervisors during the adjustment of a contract of settlement of the lawsuit. The question of compromise was before the board, and they ratified it and agreed to the compromise. If I recollect right, they quitclaimed to the railroad a portion of the lands, and received from the railroad a quitclaim to other lands in exchange, and I also recollect they were to pay the railroad company a stated sum of money; I think $10,000.

Ques. Were you a member of the board at the time some of these deeds were made?

Ans. Yes, sir.

The compromise was to settle a lawsuit which was pending between Mills County and the railroad company, and thereby settle the titles of the settlers on swamp lands purchased from the county.

Ques. Was there any doubt existing in the minds of the people and of the board as to the result of that lawsuit?

Ans. There was.

Cross-examination:

Ques. Did you understand that that was the only object?

Ans. Those two are the only motives influencing me in my action as to it.

Ques. Do you not know that there was considerable anxiety felt in regard to the location of road?

Ques. I was aware some of the people did feel anxious, but I did not myself.

253 Ques. Do you not know that other members of the board did?

Ans. No, sir; I do not.

Ques. Was you present at the time of the ratification of the contract?

Ans. It is possible; I was not present at the time the vote was ratified, but I was present at the time the deeds were signed.

Ques. You knew the contents of the proposition, did you not?

Ans. I did.

Ques. You were aware that a part of that was to secure the road through Glenwood, and if it was not built it was to fall to the ground and not be of any effect, were you not?

Ans. The only two points of any importance are those I named, to stop the suit and secure the title to the lands of the old settlers. I did not consider the location of the road a question. I felt sure they would go where they pleased, regardless of what we did. I heard of a railroad line being run from Red Oak to Council Bluffs, but whether it was before or after the appointment of the committee, I cannot remember.

Redirect examination:

If a railroad line was run from Red Oak to Council Bluffs before the compromise was affected, state whether or not it had any influence upon your mind and your vote?

Ans. Not at all. This matter of compromise had been discussed in meetings of the board previous to this suit, when I was present. I know what the sentiment of the board was upon the subject. It was as I have previously stated.

Recross examination:

Ques. Mr. Briggs, you have some interest in the swamp land yourself, have you not?

Ans. I had a pre-emption claim on a quarter section.

Ques. You got it, did you not?

Ans. No, sir.

Ques. Didn't you get any?

254 Ans. I had a contract for another forty acres, which I got.

Redirect examination:

I had a contract of purchase of the county to a forty-acre tract of land, which came to me in pursuance of this contract.

Testimony of E. A. Touzalin.

I am a resident of Burlington, and land commissioner of the C., B. & Q. R. R. Co. I have held that position for about a year and a half.

Ques. State in whose name the transactions in the disposition of the lands belonging to said company have been carried on since Dec. 31st, 1872, up to July 31st, 1875.

(Objected to by plaintiff as incompetent, irrelevant, inadmissible, not being the best evidence.)

In the name of the B. & M. R. R. Co.

Ques. State for whose benefit and at whose direction the business transactions of which you are the head have been carried on since the 31st day of Dec., 1872.

(Objected to for same reason as above.)

Ans. For the benefit of and under the direction of the C., B. & Q. R. R. Co.

Ques. State the reasons for the business transactions referred to, if any, being carried on in the name of the B. & M. R. R.

(Same objection, and does not disclose whose reasons are called for.)

Ans. The reasons were, briefly, that on the 31st of December, 1872, a perpetual lease of the B. & M. R. R. was made to the C., B. & Q. R. R., and a transfer of all its assets, including lands, contracts, bills receivable, &c.; but the said lease looked forward to an absolute transfer and deed to be made at a subsequent day, which was consum'ated July 31st, 1875. The business, therefore, was done in the name of the B. & M. R. R. until the last date. Since that time all business has been done in the name of the C., B. & Q. R. R. (Answer objected to because it purports to give contents of a written instrument and is therefore inadmissable.) This document

(witness here produced a paper) is the original lease and agreement
255 between the B. & M. R. R. and the C., B. & Q. R. R., dated Dec. 31st, 1872, a copy of which I furnish to be attached to my deposition and marked "Exhibit A."

Take this document (here the witness was handed a paper) and state what it is and whether you are familiar with it, and whether it has come under your notice and attention since you occupied the position you now hold of land commissioner to the C., B. & Q. R. R.; and if you are familiar with it, and it has come under your notice, state what has been done by the B. & M. R. R. in complying on its part with the terms and conditions therein agreed to.

(Objected to for reason as above, and that it does not call for simple facts, but influences and opinions.)

Ans. This document is the original compromise of the suit between Mills County and the B. & M. R. R. and in one of the records of this department. The compromise has come under my attention, as it has been my business to look after the new suit brought by Mills County against the railroad. The railroad has complied with all the conditions of the agreement, and has made various deeds to Mills County and to parties claiming under Mills County of dates as follows: Oct. 31st, 1868; Jan. 18th, 1870; Jan. 30th, 1871, and as attached to the answer of the C., B. & Q. R. R., there marked "Exhibit C."

(Objected to the answer as being inadmissible and not best evidence, and a portion of it as being merely the opoin' 'nd inference of witness.)

Ques. These deeds were made in pursuance of the compromise, and the company received no other consideration save lands transferred to the company by the county, as in pursuance of the compromise.

(Objection as above.)

Ques. State what was done immediately after the execution of the lease of Dec. 31st, 1872, with the property therein described, that had prior to that time been controlled by the B. & M. R. R.

(Same objection.)

Ans. The C., B. & Q. R. R. Co. took possession of the property,
256 both land, assets, and moneys.

Cross-examined:

Ques. Please describe the property that was turned over by the B. & M. R. R. Co. to the C., B. & Q. R. R. Co., and, if any money was turned over, state the amount.

(Objected to as immaterial, irrelevant, and not proper cross-examination.)

Ans. I believe that the whole property of the company as specified in the case was transferred, and as far as this department is concerned there was turned over to the C., B. & Q. R. R. Co. about 181,000 acres of land, about 2,000,000 bills receivable; in cash exactly $102,987.88 was paid to the treasurer of the C., B. & Q. R. R., being the surplus on hand at that date.

(Objected to because irrelevant and immaterial.)

Testimony of L. W. Tubbs.

I have lived in Mills County over 20 years; have held the office of probate judge. I was in Mills County at the time the committee was appointed to confer with the railroad company concerning the compromise of a lawsuit that was pending between the county and the company. I was a member of that committee; I think it consisted of four or five or six members.

Ques. State what had been done by the railroad co. prior to June 20th, 1868, the date of the appointment of the committee for the purpose of inducing the county to make this proposition.

Ans. The county had sued the company to recover certain lands; there was a suit pending between the r. r. co. and Mills County at that time. I don't know that there had been anything done by the r. r. co. to induce the appointment of that committee.

Ques. What was the cause that induced the supervisors of the county to submit that proposition, so far as you know?

Ans. The cause was this: quite an uneasiness was felt by the citizens of the county at that time. The county had sold a large portion
257 of these lands to individuals, and there was a suit pending to quiet the title, and these individuals were anxious to have this matter settled so they might get a title from somebody to their homes.

Ques. Had the railroad company prior to that time surveyed any lines in or near or through Mills County, except the original line?

Ans. None except the original first survey about 1856.

Ques. You were a citizen of the county at the time this committee was appointed. Were you familiar with the sentiment of the county and the wishes of the board at that time?

Ans. I was; dealing in stock at that time; had a great deal to do with the people of the county.

Cross-examined:

State what you know concerning a doubt as to the result of that suit that was pending, when it was compromised by the parties.

Ans. There was a doubt as to the result among the people at the time. Those that were particularly interested and those that had bought lands were anxious to have the matter settled.

Testimony of D. N. Smith.

I am 63 years of age, and reside in Burlington, Iowa; I was employed to represent the B. & M. R. R. Co., in the adjustment of the contract of settlement of a lawsuit between Mills County, as plaintiff, and the said Railroad Company as defendant. Exhibit C, attached to the petition of the C., B. & Q., in this case is a copy of the contract referred to, and which I attach to my deposition as Exhibit A. I employed H. A. Copeland to aid me to work in connection with H. C. Watkins, and Wm. Hale, on behalf of the county, in making the adjustment. The terms of the contract by the parties thereto were fully carried out on both sides, except the payment of the $10,000. The board made deeds to the company, and the company made deeds to the county in exchange, and also to individuals, who had some claim from the county, before the settlement.
258 Both the county and the company treated the contract as a final settlement of the suit, and both were well satisfied when the same was finally carried out in all respect, except the payment of the $10,000, by the county. The railroad company performed all the conditions of the contract on its part, and so also did the county, except as to the payment of the $10,000. My statements are all made from personal knowledge.

Testimony of D. M. Whitfield.

I was a member of the board of supervisors of Mills County in 1871. There was presented to the board while I was a member a claim on the part of the railroad for the $10,000 provided to be paid in this settlement. I think it was presented by Mr. Watkins, then attorney, in behalf of the railroad. The board did not settle it. Mr. Buffington and Mr. Creech concluded they would sign the deeds presented by Mr. Watkins. But the board was unanimous in refusing to pay the $10,000.

Cross-examination:

Mr. Whitfield: What time was that? In 1871; that was the cause of the submission. Mr. Watkins was chosen to make a statement of this matter and have it published after its approval by the board. Mr. Watkins, their attorney, and Mr. Creech, and Mr. Buffington thought it was the best they could do; they felt that it should be submitted to the people. I did not sign the deed when presented at that time. Mr. Buffington and Mr. Creech signed it. I think it was less than 300 acres they deeded at that time. The order of submission was not made at this meeting; it was talked over, and was to be arranged at the next meeting; we did not call a special meeting of the board.

Testimony of John M. Forbes.

I have been a director of B. & M. R. R. R. Co. since 1859, and am now. I know that in the eastern and central portion of Iowa, the B. & M. R. R. R. Co. made some very expensive mistakes by not taking more time, and spending more money to ascertain the most advantageous and ex-
259 peditious route. No "scare lines" were ever run by order of the directory, and none at all so for as I ever knew or heard. Mr. Joy, who was a very influential member of our board, had a large interest in the

Council & St. Joe R. R., and he was anxious that the B. & M. should build from Red Oak to Council Bluffs, and thus leave a large territory tributary to his road. The survey from Red Oak to Council Bluffs was made for the purpose of finding out the most feasible line. It was entered by the urgent request of Mr. Joy.

Testimony of C. E. Perkins.

I reside in Burlington, Iowa. I was superintendent of B. & M. R. R. Co. in 1868. I ceased to act in that capacity the 31st day o' Dec., 1872.

(Here the witness was handed the original contract of compromise.)

Ques. Did you sign that contract on the part of the B. & M. R. R. Co.?

Ans. I did. This proposition was made to me as the resident agent of the B. & M. R. R. Co. There had been nothing done by the R. R. co. prior to this time to induce the submission of this proposition by Mills County. Surveys were made west of the point where the road was then operated for the purpose of determining the best location for the road, and it was for that purpose the survey was made from Red Oak to Council Bluffs. There was no lines surveyed west of Red Oak for the purpose of exciting the fears of the people of Mills County, and thereby inducing them to submit a proposition of compromise of the suit then pending in the Supreme Court of the U. S. between Mills Co. and the B. & M. R. R. Co.

My understanding was that this compromise ended the litigation. It was treated as a final settlement of the case, provided the company complied with its part of the contract, which it did. The receipt of this proposition would have been very slight, as compared with the importance of building the line so as to connect with the Nebraska extention, and of draining the widest country possible. In other words, this proposition of Mills County would not have determined the company in building to Plattsmouth, if there had been no other inducements. The principal inducement which led the company to accept this proposition of the county was to compromise the lawsuit.

260

Cross-examination:

The compromise was to be a final settlement, provided both parties went on and complied with the contract.

It is agreed between counsel on both sides that another question-in-chief may be asked.

Ques. Can you state why the business of disposing of the lands in controversy has been carried on in the name of the C., B. & Q. R. R. Co.?

Redirect examination:

Ans. It is because no formal transfer was at first made by the B. & M. R. R. Co. to the C., B. & Q. R. R. Co.

There was a strong effort made to induce the building of the road on the line from Red Oak to Council Bluffs.

Recross-examination:

I think this proposition had very slight inducements upon the company to build the road through Mills County, so slight that it would have been built there any way, on other considerations. The settlement of the lawsuit was the only inducement that led the company to accept.

261 *Testimony of E. C. Bosbyshell.*

I have lived in Glenwood twenty years. I was county judge from 1857 to 1859. I met Mr. J. F. Joy on a steamboat in 1866, going down the Missouri River. He was at that time president of the Burlington & Missouri River Railroad Company. I had no conversation with him as to any particular place the road would be built in Mills County. He said he did not know then where the road would be built. He said nothing about a double terminus. He said nothing about whether it would run through Mills County. He said they did not like to build a road where the people were fighting them. I said I did not know that we were. He then referred to the suit about lands. I said why not fix up that suit. He said they were willing to settle the suit and wanted to know why the county authorities were not willing to settle. He said both the Mills and Fremont County cases ought to be settled. I told him that the two counties could not move together in a settlement, as Fremont wanted the road as bad as we did, and would be independent of us. He said nobody was independent of a railroad company. That was just the whole sum and substance of our talk. I was on the committee that made the proposition for a compromise in 1868. I could not tell what the condition of the public mind was as to where the road would go or where it would be built at the time we went to Burlington.

(Counsel for Chicago, Burlington & Quincy Railroad Company objected to the foregoing testimony because hearsay, irrelevant, and incompetent. Objection overruled, and company excepts.)

The object, as I understood it, in making the proposition, was to quiet titles to the homes of the purchasers from the county and settle the law-suit.

262 *Testimony of J. M. Walker.*

I am fifty years of age, and at present am managing the affairs of the C., B. & Q. R. R. Co., as its president. On the 31st day of December, 1872, I was president of the said railroad company, and had much to do with the making of the contract of lease and transfer of the B. & M. R. R. Co. and its property to the C., B. & Q. R. R. Co., dated December 31, 1872. I was one of the board of directors of said C., B. & Q. R. R. Co., and was present at the meetings of the board when the questions relating to the transfer were discussed. I prepared the contract of lease myself, and executed it on behalf of the Chicago, Burlington & Quincy Railroad Company. At the time of said lease, and previously thereto, and during all the time of the negotiations for said lease and transfer, I knew that the Government of the United States had made to the State of Iowa, and that the State of Iowa had made to the Burlington & Missouri River Railroad Company, a grant of lands to aid in the construction of that road, and those lands were included and were intended to be included in the transfer and lease by the Burlington & Missouri River Railroad Company to the Chicago, Burlington & Quincy Railroad Company of December 31, 1872; and I supposed and believed at that time that the lands in controversy were transferred by that lease and the title thereto became fully vested in the Chicago, Burlington & Quincy Railroad Company. I did not at that time know that there were any outstanding claims of any kind whatsoever

on the part of Mills County for the lands in dispute, nor was there any information given to the board of directors of any outstanding claims by any party or parties to the lands in controversy.

Testimony of Henry Strong.

I was engaged as counsel for the defendant in a case instituted in the district court of Mills County, Iowa, wherein Mills County was plaintiff and the Burlington & Missouri River Railroad Company was defendant.

263 The litigation involved in said case was about certain lands claimed by the Burlington & Missouri River Railroad Company, under a grant from the State, being a part of the grant by the general government to the State to aid in the construction of railroads, and the county claimed the lands under the swamp-land grant. Said cause was tried in the district court of Mills County, and an appeal was taken from there to the supreme court of the State of Iowa, and the judgment below was affirmed. An appeal was then taken to the Supreme Court of the United States. Both the Fremont and Mills County cases against the Burlington & Missouri River Railroad Company were pending in the Supreme Court of the United States at the time the Mills County case was compromised. Those two cases involved substantially the same litigation. The Mills County case was compromised by the parties thereto by a proposition made by the board of supervisors on July 13, 1868. After the agreement of compromise was made and accepted nothing was done in the case except to carry it out, which was done by the parties making conveyances to lands, as provided in the contract. No attention was given to the case after July 13, 1868, by counsel for defendant, as the matter was supposed to be compromised and settled. Said cause, after July 13, 1868, was treated as settled and disposed of by said compromise. Said compromise was treated as a final and complete adjustment of all questions arising under that suit, and was so treated by counsel for defendant, and by the defendant itself.

Testimony of H. A. Copeland.

I am forty-eight years of age, and reside in Vermillion, Clay County, Dakota Territory. A copy of the contract of settlement was handed to Mr. Copeland and he then stated that it was a copy of a proposition of compromise of a lawsuit then pending in the Supreme Court of the United States, in which Mills County was plaintiff and the Burlington & Missouri River Railroad Company was defendant.

Ques. State whether or not you had anything to do with the adjustment of said contract; and, if so, state for whom you acted, when and during what period of time you so acted, and in conjunction with whom you so acted, and state fully what was done.

264 Ans. I had nothing to do with submitting the proposition or its acceptance, unless it was to file, sign, or certify to papers officially as clerk of the board of supervisors; but I was afterwards engaged in arranging the preliminaries and in carrying out the provisions of the contract of compromise. I was employed and acted for the railroad company. The first work I did in this matter was to make an abstract of the swamp-land records of Mills County, showing what action the county had taken as to each tract. I think I made this abstract while I was clerk. My

term of office as clerk of the district court expired the first Monday in January, 1869, and a few days later D. N. Smith, an agent of the railroad company, employed me generally to look after the interests of the railroad company during the adjustment. I was connected with the adjustment of the matters referred to in the contract for compromise from the first step, which was in the spring of 1869, until the matter was finally settled by signing and exchanging deeds. In the settlement of this matter D. N. Smith and myself acted for the railroad company and H. C. Watkins and Wm. Hale acted for the county. We went over the whole record to determine such pre-emptions as were fraudulent and such as were valid. We agreed to the validity of all the pre-emptions except a few tracts. We arranged the land in separate lists, and all the even-numbered sections not sold by the county and all the odd-numbered sections not sold by the county, and on which there were no valid pre-emptions, were conveyed by the county to the railroad company, and all the odd-numbered sections which had been sold by the county were conveyed by the railroad company to the county. The odd-numbered sections on which there were valid pre-emptions were conveyed by the railroad company to the holder of such pre-emption, on payment of $1.25 per acre. This was regarded by all parties as a final adjustment of the whole matter. It was inaugurated by the county supervisors for the purpose of settling the lawsuit, quieting the titles to citizens' farms, and securing the construction of the railroad through the county.

The county and the company treated the contract as a compro-
265 mise for the settlement of the lawsuit before referred to. I was clerk of the board of supervisors when the matter was first suggested. Many prominent citizens of the county had become quite impatient about their homes, the title to which was involved in this suit, and a heavy pressure was brought to bear on the board by parties, especially who lived on the bottom lands, demanding a settlement of the suit, and the committee which was sent to Burlington was instructed by the board of supervisors to settle the suit if possible. I held no official position in Mills County during the time of the adjustment of this contract. My statements are all from personal knowledge.

Testimony of Chas. W. Spalding.

I reside in Burlington, Iowa. I am thirty-two years of age. I am secretary of the Chicago, Burlington & Quincy (formerly Burlington & Missouri River) Railroad land department. I was local land agent in Glenwood, Iowa, in 1870. I prepared the list of lands in controversy on which taxes were paid for each of the years 1870 and 1871. J. M. King superintended the payment of taxes for the Burlington & Missouri River Railroad Company, in Mills County, for 1870, on the lands in controversy. I superintended the payment of the taxes on the lands in controversy for the years 1871, 1872, and 1873. I have a list of the lands in controversy on which the taxes were paid by the railroad company for the years 1870, 1871, 1872, and 1873. I here produce the same, and hand it to the notary to be attached to my deposition as Exhibit A. Myself, J. M. King, C. B. Atkins (treasurer), and W. D. Davies were present at the time the taxes described in this list were paid.

The money was paid to C. B. Atkins, treasurer of Mills County. This list of lands, described in Exhibit A, was compared with the tax record by myself and W. W. Peet. The tax record was made from the original tax receipts. I have compared them myself to see that the entries were correct. The original tax receipts were issued by the treasurer of
266 Mills County. Exhibit A is a list of the lands in controversy, showing the section, township, range, acres, and taxes paid by the Burlington & Missouri River Railroad Co. for the years 1870, 1871, 1872, and 1873. It shows the amount for each of those years, 1870, 1871, 1872, and 1873. The grand total of taxes paid for those years amounts to $4,125.36; for 1870, $912.04; for 1871, $1,230.65; for 1872, $1,063.20; for 1873, $919.47. It describes also 160 acres of land, which was included in the deed made by Mills County to the Burlington & Missouri River Railroad Company, as to which there never was any controversy. This 160 acres was not a part of the swamp land selections; never entered into the controversy; belonged to the clear list; was certified to the Burlington & Missouri River Railroad Company as belonging to the clear list of land. It is described as follows: West ½, southeast ¼, section 1, township 72, range 40 W., 80 acres, and W. ½, southwest ¼, section 1, township 71, range 43 W., 80 acres. We paid the taxes for 1870, 1871, 1872, and 1873 on that land also. The amount of tax on this land for 1870 is $9.76; for 1871, $14.60; for 1872, $14.00; for 1873, $10.62. Exhibit A was carefully compared with the records of this office, which records were compared with the tax receipts by myself, and the same were found to be strictly correct. The 160 acres of land mentioned has never been in controversy with any one to my knowledge.

(The witness was here handed Exhibit A, attached to the answer of the Chicago, Burlington & Quincy Railroad Company in the suit with which this was consolidated.)

It is a correct list of the lands in controversy that had been sold by the Burlington & Missouri River Railroad Company prior to December 31, 1872.

(Witness was here handed Exhibit B to the answer of the Chicago, Burlington & Quincy Railroad Company, the case with which this was consolidated.)

It is a correct list of the lands in controversy which have been sold by the Burlington & Missouri River Railroad Company subsequent to December 31, 1872, and warranted.

The Burlington & Missouri River Railroad Company did con-
267 vey a certain list of lands to Mills County. I have a list of the same, showing the date of the deed, our office number, and the acres, which I hand to the notary to be attached to my deposition and marked Exhibit B. These lands were deeded by the Burlington & Missouri River Railroad Company to Mills County in pursuance of the compromise of 1868, and in consideration of other deeds made by Mills County to the Burlington & Missouri River Railroad Company.

Ques. You say in consideration of other deeds by Mills County to the Burlington & Missouri River Railroad Company. State what lands these deeds described.

Ans. These lands in controversy.

Q. You spoke of the compromise of 1868. What compromise was that?

A. It was the compromise of a lawsuit instituted by Mills County against the Burlington & Missouri River Railroad Company to recover the railroad lands in Mills County.

Q. Have you ever seen the contract by which that suit was compromised?

A. I have.

Q. State whether this is a copy of it (showing witness Exhibit C to the answer of the Chicago, Burlington & Quincy Railroad Company in the case with which this was consolidated).

A. It is a correct copy as the pencil erasures now stands.

Where blanks occur in this list, Exhibit A in my deposition, the taxes were paid by the parties to whom the railroad company sold.

Q. Take this paper (here the witness was handed Exhibit C attached to this deposition) and state what it is.

A. It is a list of the lands which were deeded by the Burlington & Missouri River Railroad Company to individuals holding some claim on them from Mills County in pursuance of the compromise of 1868 and deeded by the Burlington & Missouri River Railroad Company, J. N. Denison, or H. S. Russell, to parties holding some title or claim from Mills
268 County. I hand the paper to the notary to be attached to my deposition as Exhibit C. These conveyances from J. N. Denison and H. S. Russell were made in pursuance of an agreement between the county and the Burlington & Missouri River Railroad Company, in pursuance of the compromise.

Q. Explain how conveyances came to be made by them.

A. In the case of J. N. Denison tax deeds had been issued, which were controlled by the Burlington & Missouri River Railroad Company. In the case of H. S. Russell certificate of tax sale had been issued. They held the tax deeds and tax certificates for the Burlington & Missouri River Railroad Company. The Burlington & Missouri River Railroad Company received in consideration for the conveyances of the lands in Exhibit C the amount of taxes originally paid, with ten per cent. interest and five per cent. penalty, under and in pursuance of the compromise whereby the railroad company were to release any claims they might have to bona fide purchasers from the county.

Q. Examine that list (here the witness was handed a list that is hereto attached marked Exhibit D).

A. It is a list of lands in controversy which had been sold by Mills County previous to the compromise, and upon which the purchasers paid the balance of the purchase money to the Burlington & Missouri River Railroad Company in compliance with the terms of the contract. These lands were all conveyed by the Burlington & Missouri River Railroad Company to Mills County in pursuance of the stipulations of the contract.

These lands on this list are included in lands described in Exhibit B to my deposition.

After the compromise was adopted by the board they appointed a committee to confer with the agents of the railroad company for the purpose of ascertaining such claims as were bona fide and such as were fraudulent, and as a result of this investigation by that committee these lands described in Exhibit D were conveyed to Mills County for the benefit of those bona fide pre-emptors.

On the part of the railroad the committee consisted of D. N.
269 Smith and H. A. Copeland. On the part of the county, H. C. Watkins and Wm. Hale.

Q. Examine this list (here the witness is handed a list which is attached to his deposition Exhibit E) and state what it contains.

A. It contains a list of lands in controversy upon which tax deeds were held by J. N. Denison, or tax certificates by H. S. Russell for the railroad company, which have been quitclaimed to the parties claiming them under Mills County in pursuance of the compromise.

Q. Explain how that was brought about, and the consideration, if any, that was paid them for their tax deeds or tax certificates.

A. It was brought about by the agreement between the county and the railroad company, under which agreement the railroad company released to purchasers or pre-emptors these tax titles or tax certificates for the original amount of taxes paid, with ten per cent. interest and five per cent. for cost of conveyances, agents' fees, etc., thereby foregoing the penalty of thirty per cent., to which they would have been entitled at that time. Thirty per cent. was the penalty added to taxes immediately upon tax sales at that time. From this general adjustment or compromise the company lost a sum of money which they would otherwise have been entitled to in case redemption had been effected at the auditor's office, equal to twenty-five per cent. of the ta'es paid, and of the subsequent taxes.

These tax deeds and certificates were held by Denison and Russell for the Burlington & Missouri River Railroad Company.

Cross-examination:

I know that Exhibit B attached to my deposition is correct, from the fact that the duplicate contracts are on file in each case.

I know that Exhibit A attached to the answer of the Chicago, Burlington & Quincy Railroad Company in the main case is correct, from the fact that the duplicate contracts in each case are on file in this office.

These contracts are of the same general nature, differing only in the time.

270 Re-examination:

(The witness was handed a paper marked Exhibit M.) State what it is, and whether it is correct. This shows a list of lands in controversy upon which the Chicago, Burlington & Quincy Railroad Company holds tax titles or certificates of tax sale or both, showing to whom sold by the railroad company, date of sale, No. of contract, date of the sale for taxes, amount tax paid at the sale and subsequent taxes.

(Counsel for Chicago, Burlington & Quincy Railroad Company have omitted printing the exhibits showing the list of lands, as we presume they will be correctly described in the abstract made by Mills County in the case with which this action was consolidated, and to print them here would unnecessarily enlarge the abstract.)

To avoid expense of copying receipts and for convenience the parties agreed in writing to the following at the close of Mr. Spalding's evidence:

MILLS COUNTY
vs.
THE B. & M. R. R. R. CO., C., B. & Q. R. R. CO., et al.

District court of Mills County, Iowa.

It is hereby agreed and stipulated by the parties to the above-entitled cause that Exhibit A to the deposition of C. W. Spalding, signed on the 16th day of December, 1875, shall be received, though it be secondary and inferior evidence, and that the tax receipts thereof need not be produced and the production will not be required by plaintiffs, but plaintiffs reserve the right to correct any errors that the records in the treasurer's office may show to exist. This may be attached to said Exhibit A. This 17th day of December, 1875.

ROSS, SOLOMON & LAWRENCE,
Attorneys for Plaintiff.
O. H. BROWNING,
HALE, STONE & PROUDFIT,
Attorneys for Defendants.

271 MILLS COUNTY'S EVIDENCE.

Testimony of Wooster Fay.

I reside in Keg Creek Township, Pottawattamie County. In the spring of 1868, I think, a survey was made through the neighborhood where I live. They stopped four or five weeks in my door yard. The party was in charge of Engineer Haven. So far as I know, the survey was made under the direction of the Burlington & Missouri River Railroad Company. I think there were four parties in all, and the one under Haven was No. 4. The survey was being made from Red Oak to Council Bluffs. I think they quit in July.

Ques. State what conversation you had with the engineer in charge at the time of his leaving.

(Objected to by defendant's counsel as being hearsay. Objection overruled and defendant excepts.)

Ans. About the time Havens was leaving he says to me: "Mr. Fay, you will get no railroad here. The road will be built through Mills County via Glenwood. The county has withdrawn the swamp land suit and given us a free way through the county and depot grounds at Glenwood. Although this survey has cost about $6,000, yet we will make $100,000 out of Mills County." He was not disposed to talk much. He told me once of having met a Glenwood man, and that he told the Glenwood man that a road could be built one-quarter of a million dollars cheaper on the route from Red Oak to Council Bluffs, and he carried the idea that he had "stuffed" the Glenwood man.

(Objected to as hearsay, which was overruled, and defendant excepts.)

There were six or eight men in the party. Mr. Noah Hanks was a member of Haven's party.

At the time of making this survey I do not think the Burlington & Missouri River Railroad was built west of Red Oak, but I am not certain.

272 *Testimony of Noah Hanks.*

I belonged to surveying party No. 2, under Theilsen. It came to Glenwood from Red Oak early in the season. Theilsen came along in a wagon. He was the chief engineer of the Burlington & Missouri River Railroad Company. I had been with the party about a month.

Q. State anything you heard Theilsen say as to the line through Mills County.

(Objected to as hearsay and incompetent. Overruled, and defendant excepts.)

A. He said there was a certain point about Glenwood that he had to establish; that this would be the permanent line through Glenwood, and make an intersection here with the other road. The boys were cautioned to say nothing about it.

(Objected to as hearsay, incompetent, and irrelevant. Objection overruled, and defendant excepts.)

We left Burlington in April, I think. We got to Red Oak about a month after we left Burlington. When we came to Glenwood we went to work. We ran several trial lines. After we got through with these lines I went to Red Oak to join No. 4, under Haven. I worked on that survey from Red Oak to Council Bluffs. We left that line in August, 1868. The line we run was a trial line. Theilsen was in our party every once in a while, and when he was there I observed conferences between him and Haven.

Cross-examination:

The surveys we made about Glenwood were made in June, 1868. I had no understanding that any of these lines were run to influence the people or to scare them. I have had considerable experience running lines, and trial lines are always run before the road is located. They are often run for purposes of location and sometimes for excavations. My experience is when the chief engineer and surveyors come together they always confer privately and keep things hid from the boys.

273 Redirect:

This line from Red Oak was a trial line, though we located some on that route. I think we located half or more of this line. The location was done with great care and precision until toward the last. The transit man said once that we need not be so very particular, as the road would probably be built here. This was when they were fixing to work on this road here. This was toward the last of the survey from Red Oak.

Testimony of J. M. Powell.

I am county auditor. This book is the election record of Mills County, and these pages show the result of the vote on the ratification of the contract of compromise in 1871.

(Mills County then introduced the book, to which the Chicago, Burlington & Quincy Railroad Company objected on the ground:

1. That if there is a mistake in the canvass of the vote this court cannot correct it, and cannot hear testimony concerning whether or not there is a mistake. It can only be done by canvassing the votes, and there is

no law authorizing this court to canvass the votes. There is no law authorizing the canvass, except by pursuing the course pointed out for testing the result of an election.

2. That the making of deeds by the county under the contract was not a devotion of lands for the making of railroads, and hence it was not necessary to submit it to a vote of the people.

3. There is no law providing for the submission of the question to ratify a contract already executed in good faith to the people.

Objection overruled, and the Chicago, Burlington & Quincy Railroad Company excepts.)

Mills County then proceeded to prove by oral testimony that there was a mistake in the record, and that a majority of the votes cast were opposed to ratifying the contract. To all of which the Chicago, Burlington & Quincy Railroad Company objected and excepted to the ruling of the court.

274 In supreme court of Iowa, March term, 1877.

MILLS COUNTY, IOWA, APPELLANT,
vs.
THE C., B. & Q. R. R. Co., THE B. & M. R. R. Co., et al., appellees.

D. H. Solomon, L. W. Ross, and C. B. Lawrence, for appellant.

O. H. Browning, J. M. Walker, and Hale, Stone & Proudfit, for appellees.

AMENDMENT TO ABSTRACT, BY APPELLEES.

275 Since the cases numbered 6599 and 6603 have been pending in this court the parties in each have filed herein a stipulation as follows:

"It is agreed that said causes (6599 and 6603) shall be consolidated, and that for such purpose counsel on both sides may use in common the abstracts of pleadings and evidence in both cases."

On January 13th, 1877, the following agreement was made and signed by the parties to both cases:

In the supreme court of Iowa.

MILLS COUNTY, IOWA,
vs.
THE B. & M. R. R. R. Co., C., B. & Q. R. R. Co., and others.

THE C., B. & Q. R. R. Co.
vs.
MILLS COUNTY, IOWA.

The parties to the causes above entitled hereby agree that the appellees in the cause first above entitled and the appellant in the cause last above

entitled shall have until February 10th, 1877, in which to file abstract in the supreme court should they elect to do so, and until February 1st, 1877, in which to file arguments in the said causes. A like extension of time is also granted to the opposing party in each case from that now agreed upon by agreement on file in the office of the clerk of the supreme court of Iowa.

THE C., B. & Q. R. R. CO.,
B. & M. R. R. CO., ET AL.,
By HALE, STONE, & PROUDFIT,
Their Attorneys.
ROSS, SOLOMON & LAWRENCE,
Attorneys for Mills County.

Dated this January 13th, 1877.

276 Endorsed as follows:

JANUARY 17*th*, 1877.

Consent is hereby given to the times of the within agreement, and it is ordered that the abstract and arguments be filed pursuant thereto.

JAMES G. DAY,
Ch. J. Sup. Court.

The holding of the court on the demurrer filed April 30th, 1874, referred to on page 29 of plaintiff's abstract, is in the following words:

"February 27th, 1875. Now at this time this cause comes up on demurrer heretofore filed. After due consideration demurrer overruled. Def'ts duly except."

277 The list of lands referred to by witness D. M. Mitchell, on page 196 of plaintiff's abstract, is as follows:

	Sec.	T'p.	R'ng.	A'c's.		Sec.	T'p.	R'ng.	A'c's.
NE. NE	3	73	40	3[illegible]	SW. NE	11	71	41	40
S. ½ NE	3	7[illegible]	40	8[illegible]	SE. ¼	13	"	"	160
NE. NW	3	7[illegible]	40	3[illegible]	W. ½ NE	28	"	"	80
NE. SW	3	"	"	4[illegible]	SE. NW	28	"	"	40
E. ½ SE	3	"	"	8[illegible]	SE. SW	29	"	"	40
E. ½ NE	4	"	"	7[illegible]	S. ½	32	"	"	320
SE. ¼	4	"	"	16[illegible]	S. ½ SE	9	"	"	80
N. ½	5	"	"	3[illegible]	N. ½ NW	11	"	"	80
NE. SE	5	"	"	[illegible]0	W. ½ NW	15	"	"	80
W. ½ SE	5	"	"	[illegible]0	SW. SW	6	71	42	40
E. ½ SW	7	"	"	8[illegible]	278 W. ½ SW	6	71	42	79
NE. SE	7	"	"	[illegible]0	NE. ¼	1	71	43	140
W. ½ NE	9	"	"	7[illegible]	W. ½ SW	1	"	"	80
NW ¼	10	"	"	16[illegible]	E. ½ SE	1	"	"	80
E. ½ NE	11	"	"	80	NE. NW	2	"	"	29
NW. SE	11	"	"	4[illegible]	W. ½ NW	2	"	"	68
N. ½ SE	17	"	"	4[illegible]	NE. NE	4	"	"	27
S. ½ SW	21	"	"	8[illegible]	S. ½ SE	4	"	"	80
SE. ¼	21	"	"	16[illegible]	N. ½ NW	9	"	"	80
SW. SW	22	"	"	[illegible]0	NE. SW	11	"	"	40
NE. SE	23	"	"	[illegible]0	W. ½ SW	11	"	"	80
N. ½ SW	24	"	"	[illegible]0	E. ½ NE. (except 25				
SE. ¼	24	"	"	15[illegible]	acres east side	20	71	43	55
NE. ¼	25	"	"	16[illegible]	NE. SW	23	"	"	40
N. ½ SW	25	"	"	[illegible]0	SW. NE	27	"	"	40
SW. SW	25	"	"	[illegible]0	SE. NW	27	"	"	40
NW. ¼	1	71	40	1[illegible]0	NW. SE	27	"	"	40
SW. ¼	1	"	"	[illegible]0	SW. NE	34	"	"	80
SE. ¼	1	"	"	16[illegible]	NE. ¼	21	73	40	160
NE. ¼	2	"	"	14[illegible]	SE. NW	29	"	"	40
SW. ¼	3	"	"	16[illegible]	NE. NE	31	"	"	40
S. ½	4	"	"	[illegible]20	W. ½ NE	31	"	"	80
SE. ¼	9	"	"	[illegible]0	S. ½ NW	31	"	"	75
NW. ¼	10	"	"	[illegible]0	SE. SE	5	73	41	40
S. ½ NW. ¼	11	"	"	[illegible]0	W. ½ NE	7	"	"	80
SW. ¼	11	"	"	16[illegible]	SE. SW	7	"	"	40
SE. NE	12	"	"	[illegible]0	W. ½ NW	7	"	"	69
S. ½ NE	13	"	"	[illegible]0	W. h'f SW	7	"	"	69
SE. ¼	13	"	"	16[illegible]	NE. SE	9	"	"	40
All	14	"	"	[illegible]40	SW. NW	17	"	"	40
SE. ¼	15	"	"	16[illegible]	SE. SE	17	"	"	40
NW. ¼	22	"	"	16[illegible]	NW. SE	20	"	"	40
N. ½	23	"	"	[illegible]20	SE. NE	21	"	"	40
NE. ¼	24	"	"	16[illegible]	SW. NW	21	"	"	40
SE. ¼	24	"	"	16[illegible]	SW. SW	28	"	"	40
E. ½	27	71	40	[illegible]20	NE. SE	29	"	"	40
N. ½ NE	1	71	41	1[illegible]8	NE. NE	3	73	42	36
W. ½ SW	1	"	"	[illegible]80	W. h'f NE	3	"	"	76
N. ½ SE	1	"	"	[illegible]80	N. h'f NW	3	"	"	72
W. ½ SW. NE	2	"	"	[illegible]20	S. h'f NW	3	"	"	89
SW. SW	2	"	"	[illegible]40	NE. NE	13	"	"	40
W. ½ SW	3	"	"	[illegible]3	W. h'f SE	23	"	"	80
NE. NE	7	"	"	[illegible]40	SE. SE	23	"	"	40
N. ½ SE	25	73	40	[illegible]80	SW. NE	26	"	"	40
SE. SE	25	"	"	[illegible]40	NW. NW	13	"	"	40
E. ½ SW	27	"	"	[illegible]80	N. h'f SE	34	71	43	80
N. ½	28	"	"	[illegible]320	SE. SE	34	"	"	30
N. ½ SW	28	"	"	[illegible]80	SE. NE	71	43	43	40
W. ½ SE	28	"	"	[illegible]80	NE. SE	35	"	"	40
E. ½ NE	29	"	"	[illegible]80	S. h'f SE	35	"	"	80
SW. NE	29	"	"	[illegible]40	SW. SE	36	"	"	40
E. ½ SW	29	"	"	[illegible]80	Lot 1, NE	1	71	44	21
SE. ¼	29	"	"	16[illegible]	E. h'f NE	3	71	43	68
E. ½ NE	35	"	"	[illegible]80	NW. ¼	3	71	43	135
E. ½ SE	35	"	"	[illegible]80	E. h'f SE	3	71	43	80
NE. ¼	1	73	41	15[illegible]	NW. NE	9	71	43	40
SE. NW	1	"	"	[illegible]40	NE. ¼	7	73	42	160
E. ½ SW	1	"	"	[illegible]80	N. h'f NE	17	"	"	80
SE. ¼	1	"	"	16[illegible]	SE. NE	17	"	"	40
N. ½ NE	3	"	"	79[illegible]	S. h'f SW	17	"	"	80
E. ½ NW	3	"	"	79	E. h'f NE	19	"	"	80
SW. NE	11	"	"	[illegible]40	E. h'f SE	19	"	"	80
NW. NW	11	"	"	[illegible]40	SW. NW	11	73	43	40
E. ½ SW	11	"	"	[illegible]80	NE. SE	13	"	"	40
SE. ¼	11	"	"	16[illegible]	W. h'f SE	13	"	"	80
NW. SW	12	"	"	[illegible]40	SW. SW	15	"	"	40
N. ½ NE	13	"	"	[illegible]80	NE. NE	17	"	"	40
W. ½ NE	23	"	"	[illegible]80	W. h'f NE	17	"	"	80
SE. NW	23	"	"	[illegible]40	SE. NE	17	"	"	40
SW. ¼	9	73	40	160	NE. NW	20	"	"	40

	Sec.	T'p.	R'ng.	A'c's.		Sec.	T'p.	R'ng.	A'c's.
S. h'f NW	20	"	"	80	SE. SE	17	"	"	40
W. ½ SW	20	"	"	80	SE. NW	19	"	"	40
NW. NW	21	"	"	40	S. ½ NE	33	"	"	80
NE. SW	21	"	"	40	N. ½ NE	5	72	42	63
N. ½ SE	21	"	"	80	N. ½ NW	3	"	"	61
SE. SE	21	"	"	40	SE. NW	3	"	"	40
E. ½ NE	25	"	"	80	W. ½ SW	3	"	"	80
SE. NE	29	"	"	40	SE. SW	3	"	"	40
NE. NW	29	"	"	40	SW. NW	25	"	"	40
NE. SW	29	"	"	40	SW. ¼	25	"	"	160
NE. NW	32	"	"	40	NW. NW	35	"	"	40
S. ½ NE	33	"	"	80	S. ½ NW	3	72	42	80
NW. NW	33	"	"	40	NE. SW	3	72	42	40
NE. SW	34	"	"	40	NW. SE	3	"	"	40
NW. NE	18	"	"	40	NE. NW	3	72	40	29
NW. NW	19	"	"	41	NE. NE	5	"	"	26½
NE. SE	19	"	"	40	NE. NW	5	"	"	27
NE. NE	30	"	"	40	SW. SE. & SE. SE	6	72	40	80
SW. NE	30	"	"	40	S. ½ NW	7	"	"	79
NE. NE	36	73	44	40	W. ½ SE	7	"	"	80
SW. NE	1	72	44	40	SW. ¼	8	"	"	160
SE. SW	4	"	43	40	E. ½ NW	17	"	"	80
SE. NE	5	"	"	40	E. ½	18	"	"	320
N. h'f	20	"	"	320	SE. NE	35	"	"	40
279 SW. ¼	20	72	43	160	SW. NW	24	72	41	40
SE. SE	20	"	"	40	NW. SW	24	"	"	40
NW. NE	33	"	"	40	NE. ¼	26	"	"	160
N. ½ NW	33	"	"	80	W. ½ SW	7	72	40	80
SW. NW	33	"	"	40	N. ½ NW	7	"	"	80
Lot 1, NE. NE	2	72	44	5	E. ½ SE	7	"	"	80
Lot 1, NE	11	"	"	16	N. ½ NE	19	"	"	80
E. ½ NW	12	"	"	80	NW. ¼	19	"	"	162
Lot 4, SW. SE	36	"	"	27					
W. ½ SE	17	72	43	80	Total	.....	.....	.....	20,841

STATE OF IOWA, *Mills County, ss:*

I, Wm. H. Taft, treasurer of Mills County, Iowa, do hereby certify that the above and foregoing list of lands is a complete and perfect copy and transcript of the lands as they appear on the tax-books of said county for the year 1870, as the same now appears in my office.

Witness my hand and official signature this January 22, 1877.

WM. H. TAFT,
Treas. of Mills Co., Iowa.

STATE OF IOWA, *Mills County, ss:*

I, D. M. Mitchell, being duly sworn, state that the foregoing list of lands is the same referred to by me in my testimony in this case, an ab-
280 stract of which is given on pages 195 and 196 of plaintiff's abstract in this cause; that while I was on the stand I was requested by defendants' counsel to furnish a list of the same to the reporter, in order that the same might appear in the evidence; that I prepared said list in pursuance of such request; and, further, that the foregoing is a copy of said list so furnished.

D. M. MITCHELL.

Subscribed in my presence and sworn to before me by D. M. Mitchell this January 22, 1877.

[SEAL.]

S. V. PROUDFIT,
Notary Public.

STATE OF IOWA, *Mills County, ss:*

I, J. H. Brown, clerk of the district court of Mills County, Iowa, do hereby certify that the above and foregoing, from page 4 to 6, inclusive, is

a true, perfect, and complete transcript of the original, which latter now remains of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal. Done at Glenwood this January 25th, 1877.

[SEAL.]

J. H. BROWN,
Clerk Dist. Court, Mills Co., Iowa.

The foregoing, from page 4 to 6, inclusive, was duly filed in the office of the clerk of the district court of Mills County, Iowa, on January 25th, 1877.

281 MILLS COUNTY, IOWA, APPELLANT,
vs.
THE BURLINGTON & MISSOURI RIVER RAILroad Company.

And afterwards, to wit, on the 22' day of March, 1877, the following record entry appears:

On this day this cause is submitted to the court on printed argument of counsel.

282 MILLS COUNTY, IOWA, APPELLANT,
vs.
THE BURLINGTON & MISSOURI RIVER RAILroad Co. et al.

And on the 19th day of October, 1877, the following record entry appears, to wit:

In this cause the court, being fully advised in the premises, file their written opinion affirming the judgment of the district court. It is therefore considered by the court that the judgment of the court below be, and it hereby is, affirmed, and that a writ of procedendo issue accordingly; it is further considered by the court that the appellant pay the costs of this appeal, taxed at $, and that execution issue therefor.

283 MILLS COUNTY, APPELLANT,
vs.
THE BURLINGTON & MISSOURI RIVER RAILroad Company et al.

And now, on this 6th day of October, 1879, the plaintiff files in the office of the clerk of the supreme court his petition for writ of error in this cause, with order of the chief justice, in words & figures as follows, to wit:

UNITED STATES OF AMERICA:

To the honorable the supreme court of the State of Iowa:

Your petitioner, Mills County, Iowa, respectfully represents:

First. That in the record and proceedings, and also in the rendition of the judgment of a plea made in said court Oct. 19th, A. D. 1877, being the

highest court of law & equity in the State of Iowa in which a de-
284 cision could be had in the certain suit between Mills County, Iowa, pl't'ff & app'l't, against The Burlington and Mo. R. R. R. Co. and others, def'ts, appellees, there was drawn in question the validity of a statute of the United States, and the said decision was against its validity; and there was drawn in question the validity of an authority exercised under the United States, and the decision was against its validity; and there was drawn in question the validity of statutes of the State of Iowa, on the ground of its being repugnant to the laws of the United States, and the decision was in favor of their validity; and there was drawn in question the validity of an authority exercised under the law' of the
285 State of Iowa, on the ground of its being repugnant to the laws of the United States, and the decision was in favor of its validity; and there was drawn in question the validity of a construction of a statute of the United States, and the decision was against the right and title specially claims under said statute.

Second. That your petitioner is about to remove said cause on writ of error to the Supreme Court of the United States, and herewith presents a bond for costs only in the sum of five hundred dollars, with good and sufficient sureties, and also a citation, and prays the approval of said bond and the signing of said citation by the chief justice of your said court, to the end that said writ of error may be allowed, and said cause re-
286 moved thereunder to said Supreme Court of the United States.

Dated September 18th, A. D. 1879.

MILLS COUNTY, IOWA,
By CHA'S B. LAWRENCE,
D. H. SOLOMON, &
L. W. ROSS, *Solicitors.*

Writ of error allowed Sept. 18th, 1879.

J. M. BECK,
Chief Justice.

287 MILLS COUNTY, IOWA, APP'L'T,
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD CO. et al.

And on this 6th day of October, 1879, appears the bond in said case in words and figures as follows, to wit:

THE UNITED STATES OF AMERICA, *ss:*

Know all men by these presents that we, Mills County, Iowa, as principal, and R. Meckelwart, L. Robbins, & H. A. Summers, as sureties, are held and firmly bound unto The Burlington and Missouri River Railroad Company, John H. A. Griswold, James W. Brooks, and Alpheus Hardy, trustees; Samuel Masters, Z. O. Munson, Daniel Henderson, Samuel Purcell, F. M. Thomas, H. Fischer, The Town of Hastings, W. H.
288 Eckley, Peter Eckley, Rob't McMath, N. B. Thompson, Albert Hurshey, William McCoy, Henry Perry, J. A. Boswell, George W. Newman, Strahn & Evans, J. W. Strahn & John Evans, B. F. Pick-

erell, George Plumb, James H. McCabe, Horman Curtis, Eugene Peterson, Vallentine Plumb, C. H. Darling, Samuel Starr, The Corporation of Hen Mallory, George S. Wilson, Frank Hobbs, W. L. Roll, William Antrim, Elias Antrim, J. Antrim, H. W. Sumners, Charles Ross, Josiah Wearin, S. G. Sidner, Eliza Van Kirk, Daniel Cavenaugh, Fred. Schoenig, L. Hanson, Thomas Wiles, A. H. Burger, W. E. Dean, E. W. Weeks, C. Epperson, W. Tressler, B. Gunsollier, Lucinda Wilson, George Morrow, T. S. Crendson, D. H. Epperson, J. S. Wright, T. A. Wright, Aug. G. Sarge, Dennis Sheedy, Wm. Jones, John Haney, J. V. Hinch-
289 man, T. Smith, J. S. Wright, P. L. Delashmut, John L. Buell, Lyman Cutler, J. Van Eaton, A. P. Cutler, Thos. Connor, James Queen, Jessie Buckingham, Adam Foscht, R. Carter, A. Critz, Giles Hanson, H. C. Watkins, John Johnson, A. S. Allis, J. T. Hamilton, J. S. Runkles, Sherman L. Fletcher, Melissa J. Palmer, B. Glenn, J. F. Hendrie, Samuel Brothers, H. B. Jones, J. H. Fisher, S. D. Davis, E. Barnes, and The Chicago and Burlington & Quincy Railroad Co., in the full and just sum of five hundred dollars, to be paid to the said Burlington & Missouri River Railroad Company and others, obligees above named, their certain attorneys, administrators, executors, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors,
290 and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 13th day of September, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas lately, at a term of the supreme court of Iowa, in a court commencing at the city of Dubuque, in said State, on the 3d Monday of October, A. D. 1877, in a suit depending in said court, between the above-named Mills County, Iowa, as pl't'ff, and the above-named Burlington & Missouri River Railroad Co. and others, obligees, as defendants, final judgment was rendered against the said Mills Co., Iowa, and pl't'ff having obtained a writ of error and filed a copy thereof in the clerk's office in said court to reverse the judgment in the aforesaid suit, and a cita-
291 tion directed to the said Burlington and Missouri River Railroad Co. and others, defendants above named, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, on the Monday of October, A. D. 1879:

Now, the condition of the above obligation is such that the said Mills Co., Ia., shall prosecute its writ of error to effect, and answer all costs, if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.]

1. MILLS CO., IOWA, *Pl't'ff*,
By H. F. WILSON,
Auditor & Ex-officio Clerk B'd Supervisors.
2. R. MICKELWAIT. [SEAL.]
3. L. ROBBINS. [SEAL.]
4. W. G. SUMNERS. [SEAL.]

Sealed & delivered in our presence.

292 STATE OF IOWA, *Mills County:*

We, R. Mickelwait, L. Robbins, and W. G. Summers, the sureties subscribing the above bond, being first duly sworn, upon our oaths say that we are severally citizens and residents of the county of Mills, in the

State of Iowa; that we are respectively worth in real property situated in said county & State and not exempt from execution the sum of one thousand dollars over and above our indebtedness.

R. MICKELWAIT.
L. ROBBINS.
W. G. SUMMERS.

Sworn to before me and subscribed in my presence by the said R. Mickelwait, L. Robbins, & W. G. Sumners, this 13th of September, A. D. 1879.

[SEAL.] J. E. ROBINSON,
Clerk of the Dist. Court of Iowa for Mills County.

293 MILLS COUNTY, IOWA, APPELLANT,
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD CO. et al.

And on the 6th day of October, 1879, there was filed in this cause the original writ of error in words and figures as follows:

294 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea, which is in said supreme court before you, being the highest courts of law or equity of the State aforesaid in which a decision could be had in the suit between Mills County, Ia., plaintiff, and The Burlington & Missouri River Railroad Co., John H. A. Griswold, James W. Brooks, & Alpheus Hardy, trustees; Samuel Masters, J. O. Munson, Daniel Henderson, Samuel Purcell, F. M. Thomas, H. Fischer, The Town of Hastings, W. H. Eckley, Peter Eckley, Robert McMath, N. B. Thompson, Geo. W. Newman, Shahn & Evans, J. M. Shahn & John Evans, George Plumb, Jas. H. McCabe, Norman Curtis, Embert Peterson, Valentine Plumb, C. H. Darling, Samuel Starr, The Corporation of New Mallery, George S. Wilson, Frank Hobbs, W. L. Roll, William Antrim, Elias Antrim, J. Antrim, H. W. Summers, Charles Ross, Josiah Wearrin, S. G. Sidner, Eliza Van Kirk, Daniel Cavenaugh, Fred. Schoenig, L. Hanson, Thomas Wildes, A. H. Burger, William E. Dean, E. W. Weeks,
C. Eperson, W. Tressler, B. Gunsollier, Lucinda Wilson, George
295 Morrow, T. S. Crendson, D. H. Eperson, I. S. Wright, T. A. Wright, Aug. G. Sarge, Dennis Sheedy, William Jones, John Haney, J. V. Hinshman, T. Smith, J. S. Wright, P. L. Delashmut, John L. Buell, Lyman Cutler, J. Van Eaton, A. P. Cutler, Thomas Connor, James Queen, Jessie Buckingham, Adam Foscht, R. Carter, A. Critz, Giles Hinson, H. C. Watkins, John Johnson, O. E. Allis, J. T. Hamilton, J. S. Runkles, Sherman L. Fletcher, Melissa J. Palmer, B. Glenn, J. F. Hendrie, Samuel Brothers, H. B. Jones, J. H. Fisher, S. D. Davies, E. Barnes, and The Chicago, Burlington and Quincy Railroad Company, defendants, wherein was drawn in question the validity of a statute of the United States, and the decision was against its validity; and wherein was

drawn in question the validity of an authority exercised under the United States, and the decision was against its validity; and wherein was drawn in question the validity of statutes of the State of Iowa on the ground of their being repugnant to the laws of the United States, and the decision was in favor of their validity; and wherein was drawn in question the validity of an authority exercised under the law of the State of
296 Iowa on the ground of its being repugnant to the laws of the United States, and the decision was in favor of its validity; and wherein was drawn in question the validity of a construction of a statute of the United States, and the decision was against the right & title specially claimed under said statute, a manifest error hath happened, to the great damage of the said Mills County, Ia., as appears by its complaint: We being willing that the error, if any hath been, should be duly corrected, and full & speedy justice done to the parties aforesaid in their behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1879, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the customs of the United States should be done.

297 Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court, the 6th day of October, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred and fourth year.

[SEAL.]

EDWARD R. MASON,
Clerk U. S. Circ't Court, District of Iowa.

(Indorsed:) Filed Oct. 6th, 1879. E. J. Holmes, cl'k.

298 MILLS COUNTY, IOWA, APPELLANT,
vs.
THE BURLINGTON & MISSOURI RIVER RAILROAD CO. et al.

And on this 6th day of October, A. D. 1879, the citation in this cause was filed with proof of service of same.

United States of America, ss., greeting:

To the Burlington and Missouri River Railroad Company, John H. A. Griswold, James W. Brooks, & Alpheus Hardy, trustees; Samuel Masters, J. O. Munson, Daniel Henderson, Samuel Purcell, F. M. Thomas, H. Fischer, The Town of Hastings, W. K. Eckley, Peter Eckley, Robert McMath, N. B. Thompson, Albert Hurshey, William McCoy, Henry Perry, J. A. Boswell, Geo. W. Newman, Strahn & Evans (J. M. Strahn and John Evans), B. F. Bickerell, George Plumb, Jas. H. McCabe, Horman Curtis, Embur & Peterson, Valentine Plumb, C. H. Darling, Samuel Starr, The Corporation of New Mallory, Geo. S. Wilson, Frank Hobbs, W. L. Roll, Wm. Antrim, Elias Antrim,
299

J. Antrim, W. H. Summers, Charles Ross, Josiah Wearin, S. G. Sidnes, Eliza Van Kirk, Daniel Cavenaugh, Fred. Schoenig, L. Hanson, Thomas Wiles, A. H. Burger, Wm. E. Dean, E. W. Weeks, C. Epperson, W. Tressler, B. Gunsollier, Lucinda Wilson, George Morrow, T. S. Crendson, D. H. Epperson, J. S. Wright, G. A. Wright, Aug. G. Sarge, Dennis Sheedy, Wm. Jones, John Haynie, J. V. Hinchman, T. Smith, J. S. Wright, P. L. Delashmut, John L. Buell, Lyman Cutler, J.
300 • Van Eaton, A. P. Cutler, Thomas Connor, James Queen, Jessie Buckingham, Benjamin Buckingham, Adam Foscht, R. Carter, A. Critz, Giles Hinsen, H. C. Watkins, John Johnson, O. E. Allis, J. T. Hamilton, J. S. Runkles, Sherman L. Fletcher, Melissa J. Palmer, B. Glenn, J. F. Hendrie, Samuel Brothers, H. B. Jones, J. H. Fisher, S. D. Davis, E. Barnes, and The Chicago, Burlington & Quincy Railroad Co.:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, be holden at the city of Washington, on the second Monday of October, A. D. 1879, pursuant to a writ of error filed in the clerk's office of the supreme court of Iowa, wherein Mills Co., Iowa, is pl't'ff in error and you are defendants in error, to show cause, if
301 any there be, why the judgment of said supreme court of Iowa rendered against the said pl't'ff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to parties in that behalf.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 6th day of October, in the year one thousand eight hundred and seventy-nine.

J. M. BECK,
Chief Justice Supreme Court of Iowa.

OCT. 6TH, 1879.

302 UNITED STATES OF AMERICA,
State of Iowa, County of Mills, ss:

I, John T. Deupree, being first duly sworn, on my oath say that on the 9th day of Oct., 1879, at Glenwood, Mills Co., Ia., I served the foregoing citation on the def'ts in error, to wit, The Burlington Missouri River Railroad Co., John N. Forbes, Henry P. Kidder, James W. Brooks, Alpheus Hardy, & John N. A. Griswold, trustees; also John Evans, jr., Giles Hinson, Thomas Connor, Daniel Cavenaugh, H. B. Jones, Peter Eckley, Wm. H. Eckley, & George L. Wilson, by reading said citation to and in the hearing of Messrs. Hale, Stone & Proudfit, the solicitors of record of said defendants in error, and by delivering to S. W. Proud-
303 fit, a member of said Hale, Stone & Proudfit, a true copy thereof; and at the same time and place I serve' said citation upon said Otis E. Allis, defendant in error, by reading the same to and in the hearing of Kelley Bros., his solicitors of record, and by delivering to E. L. P. Kelley, a member of said Kelley Bros., a true copy thereof.

J. T. DEUPREE.

Sworn to before me and subscribed to in my presence by the said J. T. Deupree, this 9th day of Oct., A. D. 1879.

[SEAL.] H. B. WILLIAMS,
Notary Public, Iowa.

304 UNITED STATES OF AMERICA,
State of Iowa, County of Pottawattamie:-

I, C. H. Gilmore, being duly sworn, on my oath say that on the 9th day of October, A. D. 1879, at the office of The Chicago, Burlington & Quincy Railroad Co., in Council Bluffs, in said county and State, I served the foregoing citation on The Chicago, Burlington & Quincy Railroad Co., one of the def'ts in error in said citation named, by reading the original citation to & in the hearing of J. O. Phillippi, gen. ag't of said railroad co., at said city of Council Bluffs, and by leaving with said J. O. Phillipi, gen. ag't, a true copy of said original citation at said office and place of business of said railroad company; I further state on my said oath that the foregoing is a true copy of said original citation.

C. H. GILMORE.

305 Sworn to before me and subscribed to in my presence by the said C. H. Gilmore, this 9th day of Oct., 1879.

[SEAL.] J. H. KEITH,
Notary Public.

306 I, E. J. Holmes, clerk of the supreme court of Iowa, hereby certify the foregoing to be a true, full, and complete copy of the abstracts, amended abstracts, record entries, petition for writ of error, appeal bond, citation, and original writ of error, as true, full, and complete as the same appears on file and of record in my office.

Witness, E. J. Holmes, clerk of the supreme court of Iowa, with the seal of said court hereto attached, at my office, at Des Moines, this 6th day of October, A. D. 1879.

[SEAL.] E. J. HOLMES,
Clerk Sup. Court of Iowa.

(Indorsement on cover:) No. 191. Mills County, Iowa, plaintiff in error, vs. The Burlington & Missouri River Railroad Company et al. Iowa sup. court. Filed 6th March, 1880.

(Stamp:) Office Supreme Court U. S. Filed Mar. 6, 1880. D. W. Middleton, clerk.

6115——13